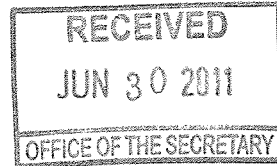


**UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING
File No. 3-13927**



In the Matter of

**GORDON BRENT PIERCE, NEWPORT
CAPITAL CORP., and JENIROB
COMPANY LTD.,**

Respondents.

**Administrative Law Judge
Cameron Elliot**

DIVISION OF ENFORCEMENT'S POST-ARGUMENT BRIEF

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I. INTRODUCTION

By failing to contest that he violated Sections 5(a) and 5(c) of the Securities Act of 1933, Respondent Gordon Brent Pierce should be found liable unless he can establish the validity of his res judicata defense. Pierce has not met his burden. Pierce cannot credibly contend that the first proceeding actually determined his liability – and corollary disgorgement obligations – for any Lexington stock sales through Newport and Jenirob. The Hearing Officer foreclosed such a contention by her procedural ruling that the Division of Enforcement’s claim for those sales was beyond the scope of the Order Instituting Proceedings (OIP) before her.

The viability of Pierce’s res judicata defense therefore rests on whether he can show -- in the context of the streamlined procedures of this administrative proceeding -- that the Division could have litigated its Section 5 claim for the Newport and Jenirob stock sales in the first proceeding. He raises three primary arguments: (1) the Division could have obtained the necessary evidence by enforcing its investigative subpoena against him; (2) even without this specific evidence, the Division knew that Pierce was involved in a scheme to distribute the stock; and (3) the Division could have moved for leave to amend the first OIP or appealed the Initial Decision’s procedural ruling. As demonstrated below, all of these arguments are unavailing.

During oral argument, the parties stipulated that the Hearing Officer could resolve any disputed issues of fact. *See* Buchholz Decl. IV Ex. G at 3:22-6:7, 81:14-84:14.¹ Hence, in making its findings and conclusions, the Court should apply the preponderance of evidence

¹ The Division relies on the Declaration of Steven Buchholz in Support of the Division of Enforcement’s Post-Argument Brief (“Buchholz Decl. IV”) and on evidence submitted in exhibits to the Declaration of Christopher Wells in support of Respondent Pierce’s Motion for Summary Disposition (“Wells Decl.”); the declarations of Steven Buchholz in further support of the Division’s motion for summary disposition against Respondent Pierce (“Buchholz Decl. II”) and the Division’s opposition to Pierce’s motion for summary disposition (“Buchholz Decl. III”); and the Declaration of Jeffrey Lyttle in support of the Division’s default judgment motion against Newport and Jenirob and motion for summary disposition against Pierce.

standard as the standard of proof. *See Steadman v. SEC*, 450 U.S. 91, 97-104 (1981). Under this standard, the Court should issue an Initial Decision finding Pierce liable for violating Section 5, imposing appropriate sanctions and rejecting Pierce's res judicata and other defenses.²

II. Pierce's Responses To The Investigatory Subpoena And His Investigative Testimony Concealed Relevant Evidence

On May 4, 2006, the Commission issued an Order Directing Private Investigation and Directing Officers to Take Testimony in an investigation entitled *In the Matter of Lexington Resources, Inc.* Wells Decl. Ex. 1. The areas listed for investigation included the possible violation of Sections 5(a) and 5(c) of the Securities Act of 1933 by persons or entities who made unregistered sales of Lexington stock without a valid exemption. *Id.* at 1. On May 17, 2006, the Division issued an investigatory subpoena to Pierce requiring production of specific categories of documents pertinent to this investigation. Buchholz Decl. III Ex. B.

On July 21, 2006, Pierce's counsel submitted a written response to the investigatory subpoena on Pierce's behalf; his responses to category numbers 1, 3, 4, 9 and 20 are particularly pertinent here. *See* Buchholz Decl. IV Ex. A. These categories requested, respectively, that Pierce produce documents identifying companies or entities for which Pierce had provided services or with which he had been affiliated; statements from bank accounts in Pierce's name or in which he had a beneficial interest; statements from securities brokerage accounts in his name or in which he had a beneficial interest or exercised discretionary control, or in whose profits and/or losses he shared; communications concerning Lexington; and documents reflecting or relating to transactions in Lexington stock. *Id.* Ex. A.

Pierce objected to Nos. 1, 3 and 4, on grounds including: vagueness as to the term "affiliated;" personal privacy "as well as the privacy of persons involved in his financial

² In any event, the Division is entitled to summary disposition for the reasons previously stated.

transactions *who have had nothing to do with Lexington*” (emphasis added); and that he allegedly was not authorized to produce brokerage statements for certain unnamed entities; he offered no legal support for this objection. *See id.* Ex. A. Pierce did not object to Nos. 9 or 20, additionally stating as to No. 20 that he “is producing his responsive records (Schedule 13D report) of trades in Lexington stock.” *Id.* With the exception of this Schedule 13D, which he filed on July 25, 2006 on behalf of himself, Newport Capital, and certain other entities (also produced in response to No. 4), the only documents Pierce produced in response to the subpoena relating to his trading of Lexington stock concerned trading in his personal account. *See id.* ¶ 3.

Pierce never produced any records reflecting his trading of Lexington stock through the Newport and Jenirob accounts at the Liechtenstein bank or revealing that he was the beneficial owner of those accounts. *See id.* The Schedule 13D that Pierce told the Division in 2006 included all of his trading in Lexington stock – for himself and for entities – did not even mention Jenirob and did not include the vast majority of Pierce’s Lexington sales through the Newport account in Liechtenstein, which were concealed from the Division until March 2009. *See Wells Decl. Ex. 5; Lyttle Decl. Ex. A.*

During his sworn July 2006 investigative testimony, Pierce denied directing Lexington trades for entities through brokerage accounts outside the U.S. He also denied having a direct or indirect ownership interest in Newport and Jenirob and objected to providing information about Newport’s ultimate individual beneficial owner. *See Buchholz Decl. IV Ex. B at 197:8-200:11; Ex. C at 303:23-304:5, 367:24-369:12; Buchholz Decl. III Exs. C & D.* Pierce’s counsel objected to questions that might have led to discovery of the Newport and Jenirob trades, such as which Hypo Bank (the Liechtenstein bank) accounts bought or sold Lexington stock in the open market and who had an ownership interest in the foreign entities involved in trading Lexington

stock. *See* Buchholz Decl. IV Ex. B at 42:18-45:22, 46:2-20, 48:5-24, 215:7-23, 232:11-15, 242:15-243:6; Ex. C at 286:12-311:4. Pierce's counsel stated that the objections to providing information about non-U.S. based entities that may have conducted business or traded in the U.S. were based on potential foreign privacy concerns, as well as concerns that Pierce could be subject to potential foreign civil or criminal liability. *E.g., id.* Ex. C at 286:12-311:4.

Both during Pierce's testimony and afterwards, the Division requested legal support for these objections, as well as support for Pierce's objection to production of account statements concerning the off-shore entities. Pierce's (then) counsel agreed to provide this legal support, but never did. *See, e.g., id.* Ex. B at 407:3-11 & Exs. D-F. During the recent oral argument, Pierce's (present) counsel did not claim that producing the documents would have been illegal, but definitively stated that "Liechtenstein law at the time created an *inviolable right of privacy* in those documents," and that Pierce "didn't have unilateral authority from Newport or Jenirob . . . to turn over records that Liechtenstein law at the time protected from disclosure." *See id.* Ex. G at 42:6-19 (emphasis added). Again, no legal support was provided.

Thus, in continuing its investigation in 2006, the Division was faced with Pierce's representations that he was not the beneficial owner of the off-shore entities selling Lexington shares into the public market through the Liechtenstein bank, that he did not sell Lexington stock outside the U.S. through such entities, and that his Schedule 13D included information about all of his Lexington stock sales for himself and for entities as called for by the Division's subpoena. Moreover, Pierce's counsel had objected to production of account records pertaining to the off-shore entities and had further objected to questions seeking information about off-shore entities during Pierce's testimony. In this context, the Division pursued information through the Liechtenstein regulator about what Pierce had represented to be other off-shore sellers of

Lexington stock, rather than from Pierce himself. The information sought included the specific sales made into the public market by entities holding accounts at the Liechtenstein bank through the omnibus vFinance account, as well as the identities of the beneficial owners of the accounts – all of which was critical information for a Section 5 analysis.

Only in March 2009 -- after the hearing in the first proceeding -- when the regulator produced the documents did the Division first learn that Pierce was the beneficial owner of the Newport and Jenirob accounts at the Liechtenstein bank and therefore personally received more than \$7 million in proceeds from Lexington stock sales through those accounts.³ *See* Buchholz Decl. III ¶ 9. This was unexpected and directly contrary to Pierce's representations in 2006 about his Lexington stock sales through off-shore entities.⁴

III. The Division's Decision To Attempt to Obtain Information From the Liechtenstein Regulator Was Within Its Discretion And Cannot Serve As A Basis for Res Judicata

Pierce argues that the Division could have obtained the information it needed to assert its present claim in the first proceeding if it had enforced its investigatory subpoena and compelled responses to questions asked during his investigatory testimony. In essence, he asks this Court to challenge enforcement decisions made by the Division in 2006 during its investigation of

³ Pierce admitted in his Answer to the present OIP that he was the beneficial owner of the assets in the Newport and Jenirob accounts at the Liechtenstein bank. *See* Buchholz Decl. II Ex. M at ¶ 25 & Ex. U at 5. The Hearing Officer's finding in the prior proceeding that Pierce beneficially owned both Newport and Jenirob may have been based upon evidence of Pierce's beneficial ownership of the Newport and Jenirob account assets, combined with his control of both entities and his direction of their trading. *See* Buchholz Decl. II Ex. J (Initial Decision) at 5. In any event, although Pierce continues to deny direct or indirect ownership of the entities themselves, he never appealed the Hearing Officer's factual findings.

⁴ Pierce has never explained how someone who allegedly had no direct or indirect ownership interest in an entity would nonetheless beneficially own the assets in the entity's account. Nor has Pierce stated any legal basis for his argument that he, as the sole identified beneficial owner of the Newport and Jenirob accounts, would have been subject to potential civil or criminal liability in Liechtenstein in 2006 had he produced records of his Newport and Jenirob sales in response to the Division's subpoena.

possible wrongdoing by Pierce and others and, based upon this hindsight judicial review, to bar the Division's present civil prosecution of Pierce's violation of the federal securities laws.

Pierce overlooks the well-settled law that the Commission has "considerable discretion in determining when and how to investigate possible violations of the statutes [it] administer[s]." *SEC v. O'Brien*, 467 U.S. 735, 745 (1984); see *Dichter-Mad Family Partnerships, LLP v. U.S.*, 707 F. Supp. 2d 1016, 1035-36 (C.D. Cal. 2010) (Commission has statutory discretion to decide "the manner and scope of how to investigate any facts, conditions, practices or matters"). The Commission's own regulations regarding enforcement are similarly discretionary. *Id.* at 1036 (citing 17 C.F.R. § 202.5, which states that "the Commission may, in its discretion, make such formal investigations and authorize the use of process as it deems necessary to determine whether any person has violated . . . any provision of the federal securities laws").

In light of this discretion, "courts have unanimously rejected challenges to the SEC's use of its investigatory powers." *Id.*; see *Molchatsky v. U.S.*, ___ F. Supp. 2d ___, 2011 WL 1471798 (S.D.N.Y. Apr. 19, 2011) at *12 (courts "ill-suited to oversee the decisions of the SEC precisely because of their inherent policy-oriented nature, often involving considerations of resource allocation and opportunity costs"); *Treats Int'l Enterprises, Inc. v. SEC*, 828 F. Supp. 16, 18-19 (S.D.N.Y. 1993) (finding APA precludes judicial review of discretionary agency actions).

Under the above case law, the Division's election during its investigation of potential Section 5 violations to seek information about unregistered stock sales by off-shore entities through the Liechtenstein regulator is not subject to challenge. If Pierce's objections were made in good faith, he cannot seriously dispute that it was reasonable for the Division to pursue this avenue rather than pursue an avenue that, by his own argument, would have been futile. In any event, an investigation is not an adjudicative proceeding that seeks a final disposition of the

rights and duties of the parties. Rather, it seeks to discover whether violations of the federal securities laws have occurred. *See, e.g., Wells Decl. Ex. 1.*

IV. The Division Acted With Diligence To Discover Facts Pierce Was Concealing

Most fundamentally, Pierce's "discovery" argument is based upon the questionable premise that he would have produced information showing the Newport and Jenirob sales and his beneficial ownership of those accounts in a subpoena enforcement action during the investigation when he had failed to produce it in response to the subpoena itself. Yet, Pierce also asserts that he could not have produced the information because he allegedly had an "inviolable right" not to disclose it or because he allegedly did not have it. Pierce cannot have it both ways.

None of the federal district court or appellate cases upon which Pierce relies alters the conclusion that *res judicata* should be rejected here. The overarching logic of these cases is that private plaintiffs with private claims had failed to pursue information known or available to them during the pendency of their earlier actions in which procedural rules had afforded them compulsory discovery process and liberal (timely) opportunity to amend or in which the plaintiffs had sought to assert new legal theories based on facts already known to them.

Unlike the above cases, the Division did not have the evidence it needed to assert the present claims when the first proceeding was instituted. Further distinguishing these cases are the limitations of this administrative cease and desist proceeding. Congress mandated such proceedings to allow the agency "to move quickly" in response to fraudulent activity. 101 Cong. Rec. H5257 (daily ed. July 23, 1990) (Rep. Markey). Accordingly, in an administrative proceeding, discovery is severely limited, the Hearing Officer lacks authority to expand the scope of the OIP, extensions of the 60 day hearing deadline are disfavored; and the time period for issuing an Initial Decision is at most 300 days from service of the OIP. *See SEC Rules of Practice 161, 230-234, & 360.* Given this Congressional mandate, the Court also should reject

Pierce's argument that, on pain of later preclusion, the Division should have waited indefinitely for evidence that might have allowed it to identify all potential claims in one proceeding rather than act quickly to assert the claims for which it had evidence. *See Block v. SEC*, 50 F.3d 1078, 1082, 1084 (D.C. Cir. 1995) (courts decline to review agencies' decisions against enforcement).

Equally important, the Division did not sleep on its rights once it received the evidence of the Newport and Jenirob sales. Rather, it immediately moved to admit the new evidence even though the hearing had concluded over a month earlier. Pierce opposed admission of the evidence on due process grounds, arguing that he was entitled to a hearing and the opportunity to respond. In the end, the Hearing Officer issued a procedural ruling that claims for the Newport and Jenirob sales were outside the scope of the OIP. Given Pierce's position, amendment of the OIP or appeal of the ruling would not have served judicial economy. Either alternative would have required the Division to request the equivalent of a new proceeding within the confines of the first proceeding. By contrast, litigating Pierce's belatedly discovered Section 5 violation in the present proceeding provided the due process and opportunity to litigate that he requested.

The above record reinforces the Division's argument that *res judicata* is inapplicable on the separate ground that Pierce concealed from the Division critical information about his sales through the Newport and Jenirob accounts and his beneficial ownership of the account assets that was needed to assert the Newport and Jenirob claims. *See, e.g., Harnett v. Billman*, 800 F.2d 1308, 1313 (4th Cir. 1986). In addition to *In re Genesis Health Ventures*, 355 B.R. 438, 454 (Bankr. D. Del. 2006), several other cases have applied this exception to deny application of *res judicata*. *See, e.g., Doe v. Allied-Signal, Inc.*, 985 F.2d 908, 910-11, 914 (7th Cir. 1993) (no amount of diligence could have alerted plaintiff that her employer had "blatantly lied about her employment status;" this was a "critical piece of the puzzle" necessary to assert her later claims);

Jean-Gilles v. County of Rockland, 463 F. Supp. 2d 437, 454-458 (S.D.N.Y. 2006) (“far from obvious that plaintiff’s reasonably diligent discovery efforts necessarily would have revealed” existence of policy underlying second case); *Montgomery v. NLR Co.*, 2007 WL 3243838 (D. Vt. Nov. 2, 2007) at *3-4 (defendants’ affidavits concealed facts that could have alerted plaintiff to existence of claim and prevented him from obtaining discovery that might have revealed it).

In short, Pierce assumed the risk of withholding relevant evidence. The Court should reject his misguided attempt to invoke a res judicata defense as a shield against his acknowledged liability for the Section 5 violation asserted in this proceeding.

V. The Division Lacked Evidence To Assert A Section 5 Claim For The Newport And Jenirob Sales Until It Received Documents From The Liechtenstein Regulator

There is also no merit to Pierce’s argument that the Division could have recommended that the Commission institute a claim for Pierce’s Section 5 violation arising from the Newport and Jenirob sales without the evidence the Division obtained from the Liechtenstein regulator. As the Division has explained, Section 5 is violated by the unregistered *offer or sale* of stock into the public market without a valid exemption. Hence, to bring a Section 5 claim, which is transaction specific, the Division needed core evidence of who sold the shares into the public market through the accounts at the Liechtenstein bank, the sale dates and volume of shares sold on each date by each seller, and the identity of the owner or beneficial owner of the accounts. These facts were necessary to establish a prima facie violation and to ascertain whether there were arguably any applicable exemptions from registration.

Until the Division received the Liechtenstein documents, it could not have brought the Section 5 claim for the Newport and Jenirob sales, as it did not have specific evidence of these unregistered sales into the public market and did not know that Pierce beneficially owned the Newport and Jenirob accounts. The so-called “scheme” to distribute unregistered shares upon

which Pierce's argument relies was wholly insufficient to serve as the basis of the present claim. Pierce's distribution of Lexington stock through private stock transfers showed only that he was not entitled to an exemption. Nor was the Schedule 13D enough: Pierce disclaimed beneficial ownership of Newport, did not mention Jenirob, and did not disclose the vast majority of the 1.6 million shares sold through the Newport account or his sales through the Jenirob account.

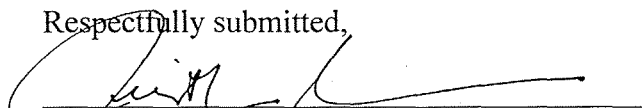
An enforcement proceeding cannot be based upon mere speculation. As set forth in the Enforcement Manual, Division staff must follow detailed procedural requirements before it can recommend that the Commission authorize such a proceeding. *See, e.g.*, Buchholz Decl. IV Ex. H. The staff is also generally guided by the principles of Federal Rule of Civil Procedure 11, under which a pleading must be legally warranted and must have evidentiary support. The staff's recommendation is further constrained by the Equal Access to Justice Act, 5 U.S.C. § 504, in which attorneys fees may be awarded to eligible prevailing parties in administrative proceedings "unless the Commission's position was substantially justified or special circumstances make an award unjust." *See* 17 C.F.R. § 201.31; 47 Fed. Reg. 609, 610 (Jan. 6, 1982) (class of claimants seeking such an award not expected to be large).

VI. CONCLUSION

For all the foregoing reasons, and additionally based upon the Division's evidence and arguments put forward previously, the Division requests that the Court issue an Initial Decision finding Pierce liable for violation of Section 5, imposing appropriate sanctions and rejecting Pierce's *res judicata* and other defenses.

Dated: June 29, 2011

Respectfully submitted,



Judith L. Anderson

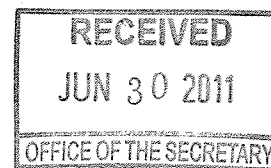
Steven D. Buchholz

Attorneys for DIVISION OF ENFORCEMENT

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING

File No. 3-13927



In the Matter of

GORDON BRENT PIERCE,
NEWPORT CAPITAL CORP., and
JENIROB COMPANY LTD.,

Respondents.

Administrative Law Judge
Cameron Elliot

DECLARATION OF STEVEN BUCHHOLZ IN SUPPORT OF
DIVISION OF ENFORCEMENT'S POST-ARGUMENT BRIEF

I, Steven D. Buchholz, declare:

1. I am an attorney duly admitted to practice in the State of California, and a staff attorney in the Division of Enforcement (“Division”) of the United States Securities and Exchange Commission (“Commission”). I am one of the attorneys appearing on behalf of the Division in this matter, and I was one of the attorneys with responsibility for the Division’s investigation in the matter of Lexington Resources, Inc. (“Lexington”). I am familiar with the files and records in this proceeding and in the prior administrative proceeding involving Lexington, Grant Atkins, and Respondent Gordon Brent Pierce (“Pierce”), File No. 3-13109. Unless otherwise specified, I have personal knowledge of the facts stated herein, and could and would testify competently to them if called to do so. I make this declaration in support of the Division’s Post-Argument Brief following oral argument on the parties’ cross-motions for summary disposition.

2. Attached hereto as Exhibit A is a true and correct copy of the July 21, 2006 written response submitted by Pierce’s counsel to the Division’s investigatory subpoena to Pierce during the Lexington investigation.

3. In response to the investigatory subpoena, Pierce did not produce any records reflecting his trading of Lexington stock through accounts at Hypo Alpe-Adria Bank of Liechtenstein in the names of Newport Capital Corp. (“Newport”) and Jenirob Company Ltd. (“Jenirob”), or revealing that he was the beneficial owner of those accounts. With the exception of the Schedule 13D that Pierce filed on July 25, 2006 on behalf of himself, Newport, and certain other entities, the only documents Pierce produced in response to the investigatory subpoena relating to his trading of Lexington stock were for trading in his personal account.

4. Attached hereto as Exhibit B is a true and correct copy of excerpts from the transcript of Pierce’s sworn investigative testimony in the Lexington matter on July 27, 2006, which was made available to Respondent for inspection at pages SEC-02354 - 02358, 02360, 02509 - 02512, 02527, 02544, and 02554 -2555 in the Division’s investigative file.

5. Attached hereto as Exhibit C is a true and correct copy of excerpts from the transcript of Pierce’s sworn investigative testimony in the Lexington matter on July 28, 2006,

which was made available to Respondent for inspection at pages SEC-02829 - 02854, 02910 - 02912 and 02950 in the Division's investigative file.

6. Both during Pierce's investigative testimony and afterwards, the Division requested legal support for Pierce's objections to providing information about non-U.S. based entities that may have conducted business or traded in the U.S. and to producing account statements concerning the off-shore entities. Pierce's counsel at the time agreed to provide this legal support, but never did.

7. Attached hereto as Exhibit D is a true and correct copy of a letter that I sent to Pierce's counsel on August 24, 2006 regarding the Division's subpoena to Pierce during the Lexington investigation, which was made available to Respondent for inspection at page SEC 03961 in the Division's investigative file.

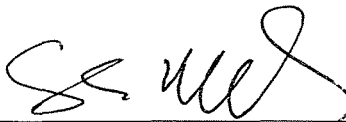
8. Attached hereto as Exhibit E is a true and correct copy of email correspondence that I received from Pierce's counsel on August 25, 2006 regarding the Division's subpoena to Pierce during the Lexington investigation, which was made available to Respondent for inspection at pages SEC 3956-57 in the Division's investigative file.

9. Attached hereto as Exhibit F is a true and correct copy of email correspondence that I received from Pierce's counsel on September 15, 2006 regarding the Division's subpoena to Pierce during the Lexington investigation, which was made available to Respondent for inspection at page SEC 03953 in the Division's investigative file.

10. Attached hereto as Exhibit G is a true and correct copy of excerpts from the transcript of the oral argument held June 8, 2011 in this matter on the cross motions for summary disposition filed by the Division and Pierce.

11. Attached hereto as Exhibit H is a true and correct copy of Sections 2.4 through 2.5.2.3 of the Division's *Enforcement Manual*, which is publicly available through the Commission's website at <http://www.sec.gov/divisions/enforce/enforcementmanual.pdf>.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed June 28, 2011, in San Francisco, California.



Steven D. Buchholz



RECEIVED

CHRISTOPHER B. WELLS
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JUL 24 2006

SEC San Francisco

July 21, 2006

Via Email and Overnight Air

Steven D. Buchholz, Esq.
Staff Attorney
Securities and Exchange Commission
San Francisco District Office
44 Montgomery Street
Suite 2600
San Francisco, CA 94104

cc (w/o encl): Office of Freedom of Information and Privacy Act Operations
SEC, Operations Center
6432 General Green Way
Alexandria, VA 22312-2413

Subject: **In the Matter of Lexington Resources, Inc.,(SF-2989)**
FOIA Confidential Treatment Request by Subpoena Recipient

Dear Mr. Buchholz:

With this letter, we are transmitting documents produced by Brent Pierce ("Pierce") under subpoena, along with a "Subpoena Attachment to Brent Pierce with Responses."

We are also revising a document previously produced by International Market Trend, Inc. ("IMT") by enclosing IMT 002589-A, which contains several additional IMT email addresses.

The enclosed Brent Pierce documents are numbered BP 00185-00424. These are all marked "CONFIDENTIAL," because they are personal, private financial records. We request that all records marked "CONFIDENTIAL" receive confidential treatment for all purposes, including any use as an exhibit discussed in taking testimony or any response to a request under the Freedom of Information Act.

Mr. Pierce is still gathering documents with the intention to produce them before you begin taking his testimony on Thursday, July 27, 2006. When we submit them, we will revise the

SEC 04431

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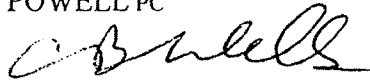
Steven D. Buchholz, Esq.
July 21, 2006
Page 2

responses to Mr. Pierce's subpoena attachment, in order to correlate the documents produced to particular subpoena attachment request numbers.

If you need additional information or have any question or suggestion, please contact me. Thank you.

Yours truly,

LANE POWELL PC



Christopher B. Wells

CBW:srf
Enclosures
cc: Brent Pierce
IMT
Stephanie Ebert
121503.0001/1312292.1

SEC 04432

**Subpoena Attachment to Brent Pierce
WITH RESPONSES**

In the Matter of Lexington Resources, Inc. (SF-2989)
May 17, 2006

DEFINITIONS

- A. "YOU" and "YOUR" mean Brent Pierce and any person or entity acting on YOUR behalf, including but not limited to agents, employees, consultants, accountants, and attorneys.
- B. "LEXINGTON RESOURCES" means Lexington Resources, Inc. and all of its current and former officers (including but not limited to Grant Atkins and Vaughn Barbon), directors (including but not limited to Douglas Humphreys, Norman MacKinnon, and Steve Jewett), employees, agents, independent contractors, partners, limited partners, attorneys, accountants, affiliates, subsidiaries (including Lexington Oil & Gas Ltd. Co. LLC), divisions, predecessors,, and successors; and any person acting on behalf of LEXINGTON RESOURCES with express, implied, or apparent authority to do so.
- C. "DOCUMENTS" means any and all records in YOUR possession, custody, or control, whether drafts or in finished versions, whether stored in written, magnetic, or electronic form, including but not limited to files, notes, summaries, analyses, memoranda, correspondence, electronic mail, facsimile transmissions, audio or video tape recordings, computer tapes or disks, and all records encompassed by Rule 34(a) of the Federal Rules of Civil Procedure.
- D. "COMMUNICATIONS" includes any transmittal or receipt of information whether by chance or prearranged, formal or informal, oral, written, or electronic, including but not limited to conversations, meetings, and discussions in person or by telephone or video conference; and written correspondence through the use of the mails, telephone lines and wires, courier services, and electronic media such as electronic mail and instant messenger.

TIME PERIOD

Unless otherwise stated below, this Attachment calls for DOCUMENTS dated, created, or reviewed between October 1, 2003 and May 17, 2006.

DOCUMENTS TO BE PRODUCED

1. DOCUMENTS sufficient to identify by name, address, and telephone number every company or other entity for which YOU have provided services or with which YOU have been affiliated in any capacity since 1995.

Objection, the term "affiliated" is vague. But, subject to the objection and interpreting the term "affiliated" to mean an entity as to which Brent Pierce served

as an officer or director or was a majority shareholder, responsive documents pertaining to Lexington are being produced. E.g., see response to No. 4 below.

2. DOCUMENTS reflecting all residential addresses, telephone numbers, drivers license numbers, passport numbers, and aliases used by YOU since 1995.

Brent Pierce (Gordon Brent Pierce).

Former residence: [REDACTED], Surrey B.C. Canada V3S 0J8 (over 3 years), B.C. DL 2173218. See BP 00185-187.

New residence as of July 5, 2006: [REDACTED]
Vancouver, B.C., VGB 1B1, Canada.

Telephone numbers: [REDACTED] (land line); [REDACTED] (mobile); [REDACTED] (fax). Recently, the land line has been changed to [REDACTED] and the fax has been changed to [REDACTED]; the mobile number remains unchanged.

Passport No.: [REDACTED] has been changed upon renewal to: [REDACTED]. See copy of passport, [REDACTED]

3. All statements from checking, savings, credit card, and other bank accounts in YOUR name or in which YOU have a beneficial interest.

This request is unduly broad and invasive of Mr. Pierce's privacy, as well as the privacy of persons involved in his financial transactions who have had nothing to do with Lexington. Subject to this objection, however, Mr. Pierce is producing responsive financial records that pertain to his trading in Lexington stock.

4. All statements from securities brokerage accounts in YOUR name, in which YOU have a beneficial interest or exercise discretionary control, or in whose profits and/or losses YOU share.

Objection as to brokerage account statements of entities that have authorized discretionary trading of Lexington stock but have not authorized Mr. Pierce to produce their records. (Mr. Pierce is producing a new Schedule 13D report of the trading in Lexington stock by persons/entities described in this request.) Piper Jaffray brokerage statements for Mr. Pierce have been produced. Mr. Pierce is producing records of an offshore account reflecting the remainder of his personal Lexington stock trades. See BP 00244-418.

5. All DOCUMENTS constituting, reflecting, or relating to any agreement, whether written or oral, between YOU and LEXINGTON RESOURCES.

Option exercise agreements have already been produced, and Mr. Pierce does not have documents related to more recent option exercises. (See Lexington documents.)

6. DOCUMENTS sufficient to identify by name, address, telephone number, and email address all persons and entities retained, directly or indirectly, by YOU to provide

promotional, marketing, advertising, financial, managerial, accounting, investment, scientific, geologic, geophysical, drilling, operational, legal, business relations, public relation, media relations, investor relation, or investor communications services relating to LEXINGTON RESOURCES.

Brent Pierce has no responsive documents.

7. All DOCUMENTS constituting, reflecting, or relating to any agreement, whether written or oral, between you and any other person or entity concerning LEXINGTON RESOURCES.

Some responsive documents already have been provided by IMT. See also the new Schedule 13D report Mr. Pierce is producing.

8. All DOCUMENTS constituting or reflecting COMMUNICATIONS between YOU and LEXINGTON RESOURCES.

Mr. Pierce has not been able to locate responsive documents, except for BP 00189-242 and documents responsive to other requests herein.

9. All DOCUMENTS constituting or reflecting COMMUNICATIONS between YOU and any other person or entity concerning LEXINGTON RESOURCES.

Mr. Pierce has not been able to locate responsive documents, except for BP 00189-242 and documents responsive to other requests herein.

10. All DOCUMENTS constituting or relating to invoices, statements of work, or any other DOCUMENTS describing services actually performed by YOU or any other person or entity relating to LEXINGTON RESOURCES.

Responsive documents were produced by IMT, which previously provided copies of its invoices to Lexington. Mr. Pierce does not maintain personal copies of these invoices.

11. All DOCUMENTS relating to payments or other consideration of any kind (including but not limited to stock, stock options, notes, and warrants) exchanged, directly or indirectly, between YOU and LEXINGTON RESOURCES. This request includes but is not limited to receipts, invoices, requisitions, cancelled checks (front and back), stock transfer records, accounts payable records, and accounts receivable records.

Option exercise and securities brokerage records have been or are being provided and Mr. Pierce does not have documents related to more recent option exercises. (See Lexington documents.) Mr. Pierce is providing records responsive to Request No. 12, some of which could be responsive to this request as well. See BP 00419-424 and response to No. 4 above.

12. All DOCUMENTS relating to payments or other consideration of any kind (including but not limited to stock, stock options, notes, and warrants) exchanged, directly or indirectly,

between YOU and any other person or entity in connection with services relating to LEXINGTON RESOURCES. This request includes but is not limited to receipts, invoices, requisitions, cancelled checks (front and back), stock transfer records, accounts payable records, and accounts receivable records.

Stock option records have already been produced and Mr. Pierce does not have documents related to more recent option exercises. (See Lexington documents.) Mr. Pierce is producing banking, securities brokerage or other financial records responsive to this request, to the extent they can be retrieved. See BP 00419-424 and response to No. 4 above.

13. All drafts and final versions of promotional materials, newsletters, reports, tout sheets, marketing, advertising, press releases, public statements, investor kits, investor relations packages, or similar DOCUMENTS, including but not limited to emails, facsimiles, and internet postings, relating to LEXINGTON RESOURCES.

Mr. Pierce does not maintain these records, and has no responsive documents to produce. (See Lexington and IMT documents.)

14. All DOCUMENTS that support each statement made in any materials distributed by YOU relating to LEXINGTON RESOURCES.

Objection, the request lacks foundation and presumes incorrect facts. Brent Pierce does not prepare Lexington press releases or promotional brochures. (Lexington prepares press releases and promotional material itself or through other vendors. Lexington reviews its print material before providing the material for distribution. Mr. Pierce does not gather documents to support statements by Lexington.) Mr. Pierce has no responsive documents.

15. DOCUMENTS sufficient to identify all internet services provider accounts and email addresses maintained by YOU.

Mr. Pierce is attempting to locate an invoice from Enom, which he believes to be his only internet service provider. Mr. Pierce's personal email addresses are:

[REDACTED]

16. DOCUMENTS sufficient to identify all screen names and user accounts maintained by YOU for Raging Bull, Yahoo, or any other internet stock message board or chat room.

Mr. Pierce has no responsive documents that pertain to Lexington.

17. All messages relating to LEXINGTON RESOURCES posted by YOU on Raging Bull, Yahoo, or any other internet stock message board or chat room.

Mr. Pierce has no responsive documents that pertain to Lexington.

18. Telephone records for all telephone numbers maintained by YOU.

Mr. Pierce objects because this request is unduly broad, burdensome and invasive of Mr. Pierce's privacy and the privacy of others with whom he has communicated by telephone. If this request is narrowed, and the relevancy explained, Mr. Pierce will reconsider this objection.

19. All DOCUMENTS reflecting or relating to any loans or lines of credit received or given, directly or indirectly, between YOU and LEXINGTON RESOURCES.

Mr. Pierce has previously provided responsive documents (and IMT, and presumably ICI, provided debt assignments for some Lexington options to ICI or IMT optionees).

20. All DOCUMENTS reflecting or relating to issuances, purchases, grants, sales, transfers, or any other transactions by YOU in the securities of LEXINGTON RESOURCES, including but not limited to stock, stock options, notes, and warrants.

Mr. Pierce is producing his responsive records (Schedule 13D report) of trades in Lexington stock.

21. All DOCUMENTS relating to the lease, rental, or ownership of premises located at 2211 Rimland Drive, Suite 100, Bellingham, WA 98225; including but not limited to agreements and records of payments.

Mr. Pierce has no responsive records, and IMT has produced the responsive document – its lease of these premises.

22. All DOCUMENTS relating to the lease, rental, or ownership of premises located at [REDACTED] Zurich, Switzerland; including but not limited to agreements and records of payments.

Assuming responsive documents exist, Mr. Pierce cannot produce these documents without authorization from the businesses at that address.

23. All DOCUMENTS relating to the lease, rental, or ownership of premises located at [REDACTED], London W1K 5EH, United Kingdom; including but not limited to agreements and records of payments.

Assuming responsive documents exist, Mr. Pierce cannot produce these documents without authorization from the businesses at that address.

24. All DOCUMENTS relating to the lease, rental, or ownership of premises located at [REDACTED], Surrey, British Columbia B3S 0J8, Canada; including but not limited to agreements and records of payments.

Mr. Pierce is producing a copy of a title report showing his ownership (with his wife as a joint tenant) of the residence at this address. See BP 00185-187.

B

1

1 THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

2

3 In the Matter of:)

4) File No. SF-02989-A

5 LEXINGTON RESOURCES, INC.)

6 WITNESS: Brent Pierce

7 PAGES: 1 through 246

COPY

8 PLACE: Lane Powell

9 1420 Fifth Avenue, Suite 4100

10 Seattle, Washington 98101

11

12 DATE: Thursday, July 27, 2006

13

14 The above-titled matter came on for hearing, pursuant to
15 notice, at 8:45 a.m.

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20

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23

24

Diversified Reporting Services, Inc.

25

(202) 467-9200

SEC-02313-A

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 STEVEN D. BUCHHOLZ, ESQ.

5 TRACY L. DAVIS, ESQ.

6 Division of Enforcement

7 Securities and Exchange Commission

8 44 Montgomery Street, Suite 2600

9 San Francisco, CA 94104

10

11 On behalf of the witness:

12 CHRISTOPHER B. WELLS, ESQ.

13 Lane Powell

14 1420 Fifth Avenue, Suite 4100

15 Seattle, Washington 98101

16 KEVIN WOODALL

17 Crossin Coristine Woodall

18 660 - 220 Cambie Street

19 Vancouver, B.C. V6Z7B9

20

21

22

23

24

25

1 A Yes.

2 Q Is this account in your name?

3 A Yes.

4 Q Do you just have one account?

5 A Yes. Well, there's actually a US dollar account
6 and a Euro account.

7 Q Right.

8 A But it's the same account number.

9 Q Right. So if we look at the first page and the
10 second page, one has a USD suffix and one has a UR suffix?

11 A Yes.

12 Q But those are just two different currency
13 denominations in your 100840 account?

14 A That's correct, yeah.

15 Q Does anyone else have authority to trade in your
16 Hypo Bank account?

17 A No.

18 Q Do you have authority to trade in any other Hypo
19 Bank accounts?

20 MR. WELLS: Well, I'm a little concerned, again,
21 that while it seems -- that seems like a very innocuous
22 question in our jurisdiction, we're talking about I think a
23 Liechtenstein or Hypo Bank account, which could be in
24 Switzerland, Liechtenstein, or some other jurisdiction where
25 identities are kept highly secret.

1 As an example, if you'll look at the Exhibit 65, I
2 don't -- I don't think you'll even see Mr. Pierce's name on
3 here anywhere. I think there's just a number. There's not
4 the name of any individual from Hypo Bank who might help him
5 service the account.

6 So, again, I think we may be running into territory
7 where Mr. Pierce may get in trouble under some foreign
8 jurisdiction law by answering a question that he would
9 otherwise be safe in answering in our jurisdiction.

10 MR. WOODALL: One of the -- one of the concerns I
11 have with the form of the question is it is unclear whether
12 you are asking him whether he has authority regarding
13 accounts in his own name, or whether you're asking whether he
14 has authority to exercise accounts in other people's names,
15 and it's the -- it's the latter that gives me the greater
16 concern because the question could include, for example, that
17 he has authority to -- to deal in the account -- in the
18 accounts in the names of -- and beneficial ownership of
19 persons other than himself, and that's the area of the
20 foreign confidentiality law that I'm talking about.

21 MR. WELLS: Just to clarify, I hate to keep going
22 on because I know you need to move on with your questioning,
23 but it is a matter of public record that Mr. Pierce has
24 trading authority for the entities mentioned in the 13D
25 report. It is not a matter of record where those entities

1 have chosen to locate their -- the accounts referenced or any
2 other details about those accounts.

3 MR. BUCHHOLZ: My concern is that it seems like
4 it's Mr. Pierce's privacy. I'm only asking if he himself
5 trades. I asked whether he has authority to trade, but I'll
6 ask him again, and you can object again if you feel it's
7 necessary.

8 BY MR. BUCHHOLZ:

9 Q Do you conduct trades?

10 MR. WELLS: Yes. If you change the question, and
11 maybe that was the problem, that -- my concern about the form
12 of the question was that it included within the question
13 where the other entity's bank account was located.

14 For example, I think you asked "do you have
15 authority to trade for any other entity in a Hypo Bank
16 account somewhere." Even whether it was a Hypo Bank account
17 or not, it could be a problematic disclosure in another
18 jurisdiction.

19 MS. DAVIS: I guess I don't understand the -- reask
20 the question about him trading.

21 BY MR. BUCHHOLZ:

22 Q Do you conduct trades at Hypo Bank for other
23 accounts other than the one you've identify in your name?

24 MR. WELLS: That is precisely the -- oh, the
25 interpretation of the question of your last question that I

1 was worried about because if he answers that question, then
2 he discloses whether or not other entities like the ones
3 mentioned in the 13D have accounts at Hypo Bank, as opposed
4 to some other bank, and that could be a problematic
5 disclosure under Swiss or Liechtenstein or some other law.

6 MS. DAVIS: Right. The fact that whether not he
7 has the authority to trade in anyone else's name --

8 MR. WELLS: That's a problem.

9 MS. DAVIS: Is not -- it's not an issue. I think
10 your concern is asking him whose name.

11 MR. WELLS: No. My concern is asking which bank
12 these other entities use and that --

13 MS. DAVIS: We haven't even gotten to the other
14 entity. We were simply asking does he trade or have the
15 authority to trade in the name of anyone else.

16 MR. WELLS: But that's fine as long as you don't
17 restrict it to Hypo Bank.

18 MR. BUCHHOLZ: Okay. So your objection is
19 identifying whether or not their accounts are at Hypo Bank?

20 MR. WELLS: Correct. I'm scared of Swiss law, I
21 have to tell you. It's counterintuitive to our
22 understanding.

23 MS. DAVIS: Right, though we're talking about US
24 laws here, any trading that he's conducted on behalf of
25 foreign securities that trade on the US markets.

1 MR. WELLS: That's fine.

2 MS. DAVIS: So we are concerned about any trading
3 that he does on behalf other individuals in US securities,
4 US-traded securities. And so whether it's in Liechtenstein
5 or Belize or wherever it is, if he's trading in the
6 securities of a stock that's traded on the US stock market,
7 and that is -- and that's registered with the Securities and
8 Exchange Commission, we're entitled to know that information,
9 and that's what we're asking.

10 So to the extent it has to do with just random
11 trading, we're not asking that, but I think we're entitled to
12 ask you, first of all, do you trade on behalf of any other
13 individuals or have the authority to trade on behalf of any
14 other individuals?

15 MR. WELLS: That's fine. No objection.

16 THE WITNESS: Individuals, I don't believe so.

17 MS. DAVIS: Okay.

18 BY MR. BUCHHOLZ:

19 Q What about entities?

20 A Yes.

21 Q Where do you currently hold bank accounts?

22 A The Hypo Bank, the Bank of America, the Bank of
23 Montreal in Canada. I have a joint account at the Bank of
24 Commerce in Canada. I have a bank account in the Cayman
25 Islands at Cayman National Bank, and I have a bank account in

1 Q Do you use that currently?

2 A I have a line of credit, yes.

3 Q Any other accounts in the last three years?

4 A I think that covers it.

5 Q Are there any other accounts where you're a
6 custodian for anyone else or anything like that?

7 MR. WOODALL: Custodian issue, phrased as broadly
8 as you have, raises the confidentiality issues that we're
9 concerned about.

10 MS. DAVIS: Okay. Well, can you answer the
11 question "yes" or "no"? If answer's "no" then --

12 THE WITNESS: I guess I'm not understanding what
13 "custodian" means. Sorry, but what do you mean by custodian?

14 BY MR. BUCHHOLZ:

15 Q Do you have authorization to conduct transactions
16 on any other accounts?

17 A Like on corporations, you mean?

18 Q Yes, or other individuals?

19 A Nobody. No other individuals.

20 Q Okay. But corporations?

21 A Yeah, yes.

22 Q Are you the beneficiary of a trust in any
23 jurisdiction that holds ownership interest and assets?

24 A No.

25 Q Have you ever been?

1 Q So how much of Pierco, then Oak Hills Energy, did
2 Newport own?

3 A I believe over 50 percent, but I'm not 100 percent
4 sure.

5 Q Other than that, are any of the Newport
6 subsidiaries in the US?

7 A No.

8 Q Do you have an ownership stake of any kind in
9 Newport Capital Corp.?

10 A No.

11 Q Neither directly or indirectly through other
12 entities?

13 A Correct.

14 Q Are there any individuals or entities who have
15 ownership stakes in Newport Capital Corp. that you are
16 willing to disclose?

17 A Not at this time.

18 Q No US citizens or Canadian citizens?

19 MR. WOODALL: Well, I'm just -- I think the
20 question at this time is as far as he can go at this time.

21 MR. BUCHHOLZ: I'm just having trouble getting my
22 hands how around a US entity or a US citizen would -- how
23 there wouldn't be any type of issue with you disclosing their
24 ownership in a company that's obviously owning US securities
25 and disclosing its ownership now in a 13D?

1 MR. WOODALL: Well, we just don't know. That's the
2 problem. I mean under -- the fact that a US or any national
3 owns a portion of a company under foreign laws doesn't
4 automatically trump the confidentiality provisions of that
5 foreign law. It might. To my mind, I don't see that the
6 nationality of the owner would automatic -- automatically the
7 case that the nationality of the owner would trump the
8 confidentiality of the foreign jurisdiction.

9 MR. WELLS: If I could confer with the witness as
10 to any US resident persons, perhaps the disclosure could be
11 made after gaining the consent of that person.

12 MR. BUCHHOLZ: Well, our position would that we are
13 entitled to know US citizens, and possibly even people from
14 other countries. I understand that there's the standing
15 objection on that, but I guess a US citizen who obviously has
16 an ownership interest, a beneficial interest in an entity
17 that's purchasing US public company securities, I think we --
18 if you want to instruct him not to answer, but I think we
19 want to make that request. We think we're entitled to that
20 information.

21 MR. WELLS: I would only instruct him not to answer
22 provisionally until I could ascertain whether, number one,
23 there was a US citizen that might come within the scope of
24 the response. And number two, if so, whether we could, Mr.
25 Pierce through counsel, could contact that person and obtain

1 consent before you complete your testimony taking today or
2 tomorrow.

3 MR. BUCHHOLZ: Okay. I'd appreciate it. If you
4 could do that, That would be helpful.

5 MR. WELLS: Could you give me just a second to
6 confer with the witness?

7 MR. BUCHHOLZ: Yes, or if when we take a break, if
8 you -- or this evening, since we're coming back tomorrow
9 morning.

10 MR. WELLS: If we could take a break now, it might
11 be a good time because we're at 4:00. We've been going for
12 an hour and a half --

13 MR. BUCHHOLZ: That sounds good.

14 MR. WELLS: -- and we may come back on the record
15 and say, whoops, there isn't anybody.

16 MR. BUCHHOLZ: Okay. Let's take a break and go off
17 the record at 4:00 p.m.

18 (Recess 4:00 to 4:14 p.m.)

19 BY MR. BUCHHOLZ:

20 Q Back on the record at 4:14 p.m.

21 Mr. Pierce, did we discuss this case while we were
22 off the record?

23 A No.

24 MR. WELLS: Well, we did -- off the record I did
25 mention very briefly that when we came back on the record Mr.

1 Pierce would make a statement about the ownership of Newport
2 that, as I understand it, derives from a public filing.

3 THE WITNESS: I believe there's been public filings
4 as to the shareholder of Newport Capital, which is Emerald
5 Trust. So I believe it's in the court of public filings, and
6 there is no Americans involved in the company, as far as
7 ownership.

8 BY MR. BUCHHOLZ:

9 Q And by Americans, you mean companies or
10 individuals?

11 A Correct, directly or indirectly or anyone.

12 Q If you could find Exhibit 74 that we marked
13 earlier, so this was the series of letters with instructions
14 between Mr. Atkins and Mr. Stevens in connection with a grant
15 between Lexington and IMT AG, and it looks like the second
16 page, IMT 96, is an instruction to take the 350,000 shares
17 that were issued to you and transfer them to Newport; is that
18 right?

19 A Yes.

20 Q And then the next two pages appear to be a letter,
21 this is dated a day later, November 25, 2003, where Mr.
22 Atkins is instructing Mr. Stevens to cancel the 350,000
23 shares certificate for Newport and issue the shares to a
24 variety of people, do you see that, people or companies?

25 A Yes.

1 transactions, but I don't know whether there was buying --
2 buys and sells or just sells. Just don't remember.

3 Q And if you did for accounts of Sparten and Pacific
4 Rim, it would be through Peacock Hislop?

5 A That's correct, yes.

6 Q Did Newport have -- well, I'll start again.
7 For which accounts of Newport did you buy or sell
8 Lexington stock in the open market?

9 MR. WELLS: Well, I think we're back to the problem
10 of identifying the bank, a foreign bank perhaps, of a non US
11 citizen. I forget where Newport is domiciled. Belize.

12 BY MR. BUCHHOLZ:

13 Q Okay. Let's start with the US then.

14 Did you purchase or sell Lexington stock in the
15 open market for any accounts of Newport Capital Corp. in the
16 US?

17 A Yes.

18 Q Which accounts?

19 A Let's see. vfinance, Peacock Hislop, SG Martin.

20 Q Capital S, capital G is that?

21 A Yes.

22 Q Any others?

23 A I think that's it.

24 Q Did you have a broker that you worked with in
25 particular at Peacock?

1 don't remember at the time.

2 Q And did the -- where did the liquid assets number
3 come from?

4 A The same. I mean it would have just come out of
5 accounting documents for that period of time.

6 Q And the net worth, as well?

7 A Yes.

8 Q Are those other accounts, the Barclays Bank and the
9 Bank One account, are those Newport Capital accounts?

10 A Yes.

11 Q Did you conduct trading for any other accounts at
12 vFinance, other than the Newport Capital account we've been
13 talking about?

14 A I don't have any authority to conduct trading in
15 any other accounts.

16 Q Did you ever open or cause to be opened any other
17 accounts for any other parties at vFinance?

18 A I might have recommended him to somebody, but I
19 just don't remember who that would be.

20 Q So by "him," you mean Mr. Thompson?

21 A Mr. Thompson. I think I recommended him to
22 possibly Markus Johnson. Just thinking about a business
23 associate now. And possibly to Jim Dow. I don't know whether
24 he ever opened an account. Those are --

25 Q How do you know Mr. Dow?

1 A Correct.

2 Q So we were trying to determine whether or not the
3 increase from roughly 140,000 -- 440,000 was the stock split
4 related increase, or if there was some additional stock
5 option transaction --

6 A I'll be more than --

7 Q -- that resulted in depositing?

8 A Like I said, I'd have to look.

9 Q We would appreciate it if you would confirm that.
10 All right.

11 A Sometimes with the Hypo Bank, when there's a stock
12 split like that, it takes a long time for the account to
13 actually show the split. So I -- I don't know. That's -- I
14 remember that from other occasions.

15 Q Do you have an understanding as you sit here today
16 of about how many shares of Lexington stock you received
17 personally and actually put into brokerage accounts and
18 ultimately sold of Lexington?

19 A I have an accounting of it, yes.

20 Q You do?

21 A Yes.

22 Q Of --

23 A Of every transaction.

24 Q Do -- would you be willing to provide a copy of
25 that accounting?

1 MR. WELLS: Depending on whose record this is, if
2 this is Mr. Pierce's individual record.

3 BY MR. BUCHHOLZ:

4 Q You have no objection to producing that if it's a
5 personal record?

6 A No, I don't.

7 Q We would appreciate that. I think it would really
8 be helpful.

9 Okay. Do you have a sense, as you sit here now, of
10 -- of like how many shares or what the proceeds were?

11 A Not a chance, no. Like I said, I couldn't even
12 tell you. I think the proceeds were -- or any of the profits
13 were claimed on my Canadian taxes or recorded, so.

14 Q I think that's a good breaking point for today.

15 Do you have anything that you want to clarify,
16 anything that you've thought of at this point? I'll give you
17 another opportunity when I finish tomorrow --

18 A Sure.

19 Q -- if there's anything that you feel like you need
20 to clarify.

21 A I think I'm okay right now.

22 MR. BUCHHOLZ: Counsel, do you want to ask any
23 clarifying questions at this point?

24 MR. WELL: No. Thank you.

25 MR. BUCHHOLZ: All right. Let's go off the record

PROOFREADER'S CERTIFICATE1
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In the Matter of: LEXINGTON RESOURCES, INC.
Witness: Brent Pierce
File Number: SF-02989-A
Date: Thursday, July 27, 2006
Location: Seattle, Washington

This is to certify that I, Laurie Andrews (the undersigned), do hereby swear and affirm that the attached proceedings before the U.S. Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

Laurie Andrews

(Proofreader's Name)

8/10/06

(Date)

1 STATE OF WASHINGTON) I, Judy Steenbergen-Webb, CCR, RPR,
2 County of King) ss CCR #2495, a duly authorized
3 Notary Public in and for the State
4 of Washington, residing at
5 Sammamish, do hereby certify:

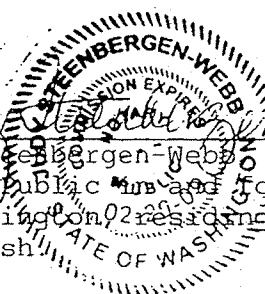
6 That the foregoing examination of Brent Pierce,
7 Vol. 1 was taken before me and completed on July 27, 2006, and
8 thereafter was transcribed under my direction; that the
9 deposition is a full, true and complete transcript of the
10 testimony of said witness, including all questions, answers,
11 objections, motions and exceptions;

12 That the witness, before examination, was duly
13 sworn to testify the truth, the whole truth, and nothing but
14 the truth;

15 That I am not a relative, employee, attorney or
16 counsel of any party to this action or relative or employee of
17 any such attorney or counsel and that I am not financially
18 interested in the said action or the outcome thereof;

19 That I am herewith securely sealing the said
20 deposition and promptly delivering the same to
21 Attorney Steven Buccholz.

22 IN WITNESS WHEREOF, I have hereunto set my hand
23 and affixed my official seal this day of
24 , 2006.

25

Judy Steenbergen-Webb CCR, RPR,
Notary Public in and for the State
of Washington, residing at
Sammamish, STATE OF WASHINGTON

1 THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

2

3 In the Matter of:)

4) File No. SF-02989-A

5 LEXINGTON RESOURCES, INC.)

6 WITNESS: Brent Pierce

COPY

7 PAGES: 247 through 410

8 PLACE: Lane Powell

9 1420 Fifth Avenue, Suite 4100

10 Seattle, Washington 98101

11 DATE: Friday, July 28, 2006

12

13 The above-titled matter came on for hearing, pursuant to
14 notice, at 8:18 a.m.

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24 Diversified Reporting Services, Inc.

25

(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 STEVEN D. BUCHHOLZ

5 TRACY L. DAVIS (via telephone)

6 Division of Enforcement

7 Securities and Exchange Commission

8 44 Montgomery Street, Suite 2600

9 San Francisco, CA 94104

10

11 On behalf of the witness:

12 CHRISTOPHER B. WELLS

13 Lane Powell

14 1420 Fifth Avenue, Suite 4100

15 Seattle, Washington 98101

16 KEVIN WOODALL

17 Crossin Coristine Woodall

18 660 - 220 Cambie Street

19 Vancouver, B.C. V6Z7B9

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1 premature objection, but we may have some problem or Mr.
2 Pierce may have some problem actually retrieving records from
3 IMT AG if it is one of these foreign domiciled companies,
4 which I believe it is.

5 MS. DAVIS: Well, I guess it depends on where it --

6 BY MS. DAVIS:

7 Q Where is IMT AG domiciled? Did we establish that
8 already?

9 A Switzerland.

10 Q I'm sorry?

11 A Switzerland.

12 Q Okay, and at what point -- we need a date certain
13 in which you are going to get back to us on these issues
14 about these foreign domiciled companies.

15 MR. WOODALL: Can't give it to you at this
16 movement. There's been a number of questions that have been
17 asked. If we can get the questions specified in writing,
18 either by the transcript or by you providing them in writing,
19 then we can answer them.

20 The first step I think is for us to find out
21 exactly what questions you want us to pursue, and then we can
22 give you an answer as to when we can get back to you. I
23 understand your concern that it be sooner rather than later,
24 but as I'm sitting here in the office today, I can't give you
25 dates.

1 MS. DAVIS: Well, the problem is we've asked a
2 number of questions that really all relate to the same thing,
3 which is whether or not Mr. Pierce has access to information
4 of records about IMT AG, Newport Capital, and several things
5 he was asked about yesterday. Those are all very basic
6 questions.

7 MR. WOODALL: My concern is -- and without knowing
8 completely the answer, my concern is that the answer may
9 depend on the precise form -- or sorry, the precise nature of
10 the information you're seeking.

11 So, for example, it is -- and I'm speaking
12 hypothetically here -- it is possible that the identity of
13 directors and officers of those companies may not be
14 confidential whereas shareholder lists may be.

15 It may be that shareholder lists are not
16 confidential, but transactions that the entities have engaged
17 in may be. So that's why I say -- I don't believe that the
18 answer is going to be so broad and simple as simply does he
19 have access to records. And so I think Mr. Buchholz wants to
20 interject here.

21 MR. BUCHHOLZ: Well, I don't want to interrupt you.
22 Go ahead and finish.

23 MR. WOODALL: No, go ahead.

24 MR. BUCHHOLZ: But I think it's pretty obvious from
25 the questioning and -- we are looking for the directors and

1 officers and owners of these entities, including an entity
2 that there's now been a 13D -- actually several entities that
3 there's been a 13D filed for that does not disclose its
4 beneficial owners.

5 So that should be very clear, and whether or not --
6 and we also are asking for financial records, but -- you
7 know, we feel like the request basically puts it into Mr.
8 Pierce's court in terms of -- the testimony definitely sets a
9 basis for us, for the information being connected to US
10 publicly-traded companies that Mr. Pierce was involved in
11 trading the securities of and involved in providing services
12 to.

13 So that's why we feel like it really is up to him
14 to get back to us with information, and there either needs to
15 be a direction from his counsel that he cannot provide the
16 information, but we have made the request, and we just can't
17 wait indefinitely. We have to pursue whatever means we need
18 to to get the information.

19 MR. WOODALL: There seems to be three separate
20 issues on the table here, and let's try and keep them
21 separate. The first two issues are issues of process, and
22 the third issue is one of substance.

23 The issue of process is are you going to tell us or
24 give us a transcript so that we can determine the specific
25 questions you are asking? It's no help to you, and it's no

1 help to us to simply insist that we answer "the request"
2 because there isn't a single request. There have been a
3 number of requests about a number of companies involving a
4 number of different types of information.

5 So the first question of process is are you going
6 to ask -- give us the questions in writing or a copy of the
7 relevant portions of the transcript so that I can be sure
8 that we are asking -- we are answering the questions you have
9 asked? I don't understand know why that's an issue. If you
10 want us to answer the questions, make sure that we know --
11 make sure that we know the questions you want us to ask.
12 There's no issue of confidentiality obviously because you
13 have already asked the question.

14 MS. DAVIS: Well, Mr. --

15 MR. WOODALL: Can I just finish my --

16 MS. DAVIS: Sure.

17 MR. WOODALL: -- identifying the issues so that we
18 can make sure that we are approaching this matter in a
19 systematic way? Once we have the questions that we know that
20 you wish to pursue -- and again, I don't understand why
21 you're not prepared to give it to us, but you'll have an
22 opportunity to address that in a moment.

23 The second question then is a matter of -- and also
24 a matter of process which is when can we get back to you with
25 the answer, and once we have the questions, we will be able

1 to focus our attentions and hopefully get to an answer soon.

2 I'm not suggesting -- I understand very well that
3 you have a desire to resolve this quickly. Obviously, to me,
4 the way to resolve it quickly is to allow us to focus on what
5 the issues are, which is to tell us what the questions are.

6 The third question then is one of substance, and
7 that is the question that we will have to address, which is
8 the advice that we give to Mr. Pierce about his ability to
9 answer them.

10 So if your overall concern is to move on quickly
11 with this, then it seems to me the obvious first step is for
12 you to clarify precisely what it is that you want to answer.
13 I have been taking general notes, and I understand generally
14 the issues, generally the entities, but it's not going to
15 help us to be able to get back to you unless we know
16 precisely what is it you want.

17 And I don't know why getting a portion of the
18 transcript, if you don't want to repeat the questions because
19 of the effort that may take, or you write out the questions,
20 is a big deal.

21 MS. DAVIS: Okay. Well, let me start with why we
22 don't write out the questions. We don't do that for anyone
23 because that's not our job at the Securities and Exchange
24 Commission, sir. What we do is get information from
25 witnesses at the time that we ask the questions. We don't

1 provide anyone with questions in advance before we ask them
2 because we want the witness's best recollection.

3 Now, if you have an objection, you'd like to
4 instruct your client not to answer, then that's the process,
5 and we understand that's a practical matter. We do want to
6 get the information. And all I'm telling you is we can't sit
7 down and write out a list of questions for your client to
8 then decide whether or not he wants to answer.

9 And I think at this point what would be the most
10 probably useful is to the extent that we ask a question, and
11 you have the objection on the grounds of confidentiality,
12 which by the way is not an objection that is useful for our
13 process, but in any event, if you have an objection, then for
14 us it would be useful for you to make the objections, then
15 instruct your client not to answer, and get back to us on the
16 information. But at this point in the process, we can't and
17 don't provide questions in advance for witnesses to answer.

18 When Mr. Buchholz said that we provided the general
19 parameters, I think it's pretty clear there are companies
20 that Mr. Pierce has testified to over the course of a day
21 now, that were involved in providing services to a US
22 publicly-traded company, and have traded shares in that
23 publicly-traded company. And we would like information
24 regarding those entities. And if your objection is you
25 cannot provide that information, then we would like that to

1 be clear on the record so that we can then move forward from
2 our own end as to what we do with that.

3 But at this point, we cannot provide questions in
4 advance. Of course you can make a request for a copy of the
5 transcript, we do do that, and we are not denying you the
6 right to get a copy of the transcript. You can obviously do
7 that, but we don't want you to misunderstand that only the
8 specific questions that we have asked that are identified in
9 the transcript are the ones that you are going to go and find
10 the answer to.

11 What we generally want to know is can Mr. Pierce
12 provide information about the identities of, the shareholders
13 of, the directors of the various companies that we have
14 talked about that were involved either directly or indirectly
15 with Lexington Resources. That's the broad question.

16 Now, we can't sit down and write out every question
17 because of course with any question, there are going to be
18 follow-up questions depending on what the answer is, and
19 that's why we don't provide questions in advance.

20 MR. WOODALL: Perhaps we are talking at cross
21 purposes here. I wasn't expecting that you would provide in
22 writing every question and every follow-up question that you
23 want.

24 MS. DAVIS: Okay.

25 MR. WOODALL: What I was hoping that we would be

1 able to get are the questions you've asked at, least to this
2 point, because that allows us to focus our -- our assessment
3 and analysis of his obligations. I would expect that our
4 answer to the question of whether he's at liberty to provide
5 the information you've asked on the questions you've asked so
6 far, will also have apply to follow-up questions.

7 It is always possible, but probably not likely,
8 that follow-up questions would engage a different set of
9 analysis, but all I'm asking is that we have in writing,
10 either by the transcript or by you writing them out, I don't
11 really care, the questions you've asked to this point. And,
12 you know, saying that it's not how you do the -- how you do
13 things, I can appreciate that concern going forward because I
14 understand the process.

15 But concerning the questions you've asked already,
16 that's water under the bridge. You've asked the questions.
17 The -- your legitimate concerns about being able to ask
18 questions without telegraphing where you are going have
19 already been met by the fact that you've asked the questions.

20 So to summarize then, we are not -- I'm not taking
21 the position -- and I certainly agree with you that you don't
22 have to write out every question and every follow-up question
23 you might want to ask. All I'm asking for is the questions
24 you have asked to this point.

25 MR. WELLS: And this is Chris Wells. I just want

1 to make -- I'm identifying myself for the record and also for
2 the benefit of counsel who is only present by telephone -- I
3 think maybe our objection has been mischaracterized as one of
4 confidentiality. I do not believe that is the basis of the
5 objection.

6 The basis of the objection is that we, that is Mr.
7 Pierce's Canadian counsel and we at Lane Powell in the US, do
8 not want Mr. Pierce to violate the law of another country in
9 the course of his attempts to assist the SEC in gathering
10 information in this investigation.

11 So, for example, Mr. Pierce does a lot of business
12 in Europe, as he has testified in this proceeding, and he
13 does not want to risk being held civilly liable to various
14 Swiss or Liechtenstein or foreign jurisdictions, and he
15 doesn't want to risk criminal liability in those
16 jurisdictions, as well.

17 So that requires some caution before giving him
18 advice as to how to proceed and his Canadian counsel are
19 going to be addressing that problem as soon as possible.
20 Thanks.

21 MS. DAVIS: Okay. And I think the point that we
22 are trying to make is, with respect to companies, I
23 understand the issue about potential liability in another
24 country when disclosing information that may or may not be
25 confidential.

1 Our concern is with respect to a US publicly-traded
2 company, if there are entities on whose behalf Mr. Pierce is
3 acting on, and we are seeking that information, then I'm not
4 sure how that puts him in some kind of jeopardy to the extent
5 that that is connected to business in the publicly-traded
6 company.

7 But I understand your objection and, you know, our
8 concern was mainly that not only that Mr. -- that Mr.
9 Pierce's Canadian counsel would like time to I guess research
10 the issue, but we need a time line. And we can do it from
11 one week from the time you get the transcript. I mean the
12 issues themselves are out there, and I think it's pretty
13 clear what the issues are in terms of confidentiality. So
14 that's why we don't understand why there can't be some kind
15 of parameters on the time line.

16 MR. WOODALL: Well, I'm not saying we won't give
17 you that soon. I mean it seems to me -- well, let me just go
18 back and explain why we can't give you the parameters now. I
19 am not a Liechtenstein lawyer or a Swiss lawyer. So what I'm
20 going to have to do with Lane Powell is -- I would begin by
21 analyzing the questions, not much differently than what you
22 just did a moment ago.

23 There may be some questions that irrespective of
24 the law of foreign jurisdiction, you're entitled to ask him.
25 So we don't know to go to Switzerland or Liechtenstein to get

1 the answer to that question, and the point that you made a
2 moment ago about US traded companies may very well apply.
3 I'm not disagreeing with that as a possible overriding
4 principle.

5 But where there are questions that you've asked
6 that do engage the confidentiality laws of a foreign
7 jurisdiction, we are going to have to consult lawyers in
8 those areas. My limited experience in the past has led me to
9 understand that they will want to know what the question is
10 and what the purpose of the -- is for the information. They
11 may have derivative use immunity laws. They may have laws
12 that allow information to be used for some purposes but not
13 for others. I just don't know.

14 And so the difficulty I have today in giving you a
15 time line is I haven't -- I don't have the advice yet from
16 the lawyers in the foreign jurisdictions. This is the
17 summer. They probably do the same thing we do, which is take
18 vacation. So you can't phone somebody up and say I want an
19 answer in 48 hours.

20 So if it was me researching Canadian law, I could
21 commit to a time, but it's not me researching Canadian law.
22 It's me engaging foreign counsel and asking opinions from
23 them, and if you are concerned about getting the process
24 moving quickly, the fastest way to get the process moving
25 quickly is to give us something in writing, again, the

1 transcript or from you, that we can take to the foreign
2 counsel and say this is the specific question that we want
3 answered. And again, I'm not resigning from the fact that
4 that doesn't mean you can't ask follow-up questions and get
5 an opinion.

6 So if you want the matter to move quickly, give us
7 what you want in writing. Then we can approach the foreign
8 counsel, and, you know, you'll just have to, at the moment,
9 take it on good faith. And I understand your desire to have
10 the matter move quickly, and we will take it forward quickly,
11 but I can't give you a date.

12 MS. DAVIS: Okay. With respect to entities that
13 are identified in public filings with the SEC, I don't
14 understand why that's an issue with Mr. Pierce discussing or
15 testifying about that information.

16 MR. WOODALL: Well, the question you've asked --
17 the concept you have asked is, at the moment is so broad, I'm
18 not quite sure what you mean. You say "entities that are
19 traded."

20 If you've got, for example, a company that owns or
21 has a beneficial interest in securities of a US company
22 traded in the US, perhaps the identity of the company that is
23 doing the trading is a fairly obvious point. But when you
24 get into questions about the activities of a company that
25 owns that company or some other corporate organization or

1 trust, for example, that owns it, now you are getting into
2 some distance from the obvious point.

3 It may very well be that we are told that there are
4 no issues, but the farther you get away from the precise
5 entity that owns the shares and is directing their trading,
6 the more difficult the question is to answer and the less
7 obvious the answer is.

8 MS. DAVIS: And I think the reason we got into this
9 area was that, if I'm not mistaken, Mr. Buchholz was asking
10 about 13D filings.

11 MR. WOODALL: Well, we have -- we had a lot of
12 questions yesterday about a lot of things, and that's why --
13 you understand your process better than I, and I would never
14 suggest to you how to do your job, but all I'm saying is if
15 we can get in writing what we want -- because you have
16 already asked the questions, it's not like you're going to be
17 -- you're going to be losing the legitimate element of
18 surprise in an investigation. I don't doubt that that's an
19 issue.

20 If we get them in writing, then we can move
21 forward, and I'm telling you that I will look into the issue
22 as quickly as I can. This investigation is taking some time,
23 and it will take some more time, and we won't stand in the
24 way of it proceeding quickly. But I can't give you a
25 deadline today, and I can't answer the questions today.

1 MS. DAVIS: Okay. Steve, correct me if I'm wrong,
2 did we -- I thought we got into this area because we were
3 asking about some of the entities in the 13D filing?

4 MR. BUCHHOLZ: Yeah. Well, it's come up in that
5 connection, and it also, I think, may have been IMT AG that
6 directly led to this, but I mean I can't -- I can ask a very
7 specific question, which is -- and I may have asked it
8 yesterday, but obviously Newport Capital has just filed a 13D
9 disclosing transactions in Lexington, a US public company,
10 who -- which entities, which individuals have ownership
11 interests in Newport is the basic question, and I think we
12 are entitled to that information. I don't actually remember
13 at this point whether you instructed him not to answer or
14 objected to that on these grounds.

15 MR. WELLS: I believe we did as to Newport, again
16 subject to an inquiry about the law of foreign jurisdiction
17 which Newport is domiciled and incorporated, founded,
18 whatever it is. I think it's Belize and Switzerland.

19 MR. BUCHHOLZ: And I think the same thing happened
20 with regard to Parc Place and Sparten and Pacific Rim, which
21 are all identified as entities in the 13D that Mr. Pierce
22 directs or has control over, is that right --

23 MR. WELLS: Well, hang on just a second.

24 MR. BUCHHOLZ: -- for the purpose of the shares of
25 Lexington, and you are not providing that information today,

1 is that right, Mr. Pierce?

2 THE WITNESS: That's correct, although I believe we
3 did provide some information yesterday.

4 MR. WELLS: The ownership of Newport was disclosed
5 in a public document, and we went as far as that, but we
6 couldn't go beyond who owns the Emerald trusts or who's the
7 beneficiary.

8 THE WITNESS: And we also said that it wasn't a US
9 resident.

10 MR. BUCHHOLZ: Right.

11 THE WITNESS: I think that's as far as we got with
12 it.

13 MR. WELLS: Yes. Very good.

14 MR. BUCHHOLZ: And I think just so that it's clear
15 at this point, I want to -- I think there's other things that
16 -- well, I just wanted to be clear that we have -- that
17 there's a subpoena outstanding for this information, and we
18 believe that some of this information, if not all of this
19 information, is required to be provided. And that, you know,
20 after we adjourn today, it's -- the information that we've
21 requested and asked about has not yet been provided, and it's
22 an open subpoena, the testimony will not have been completed,
23 obviously.

24 And so I think the point about the time is that we
25 understand right now you are not willing to give us a

1 specific date, but we also are not willing to wait
2 indefinitely to enforce the subpoena. So we obviously want
3 to work with you, and we understand that there is going to be
4 some time needed to get the information, but we just need it
5 to move diligently.

6 And we will talk to you, I think, after the
7 proceeding today and move forward as quickly as we possibly
8 can. You understand we have to do what we need to do to get
9 the information.

10 MR. WOODALL: I don't disagree with any of that.

11 MR. BUCHHOLZ: Okay. Do want to say anything else
12 on that, Tracy?

13 MS. DAVIS: No.

14 BY MR. BUCHHOLZ:

15 Q So let me just cover this as well.

16 Mr. Pierce, do you know who the beneficial owners
17 are of the Emerald Trust?

18 A Yes.

19 Q A "yes" or "no" question.

20 A Yes.

21 Q You do?

22 A Yes.

23 Q Okay. Are you willing to -- do you know how many
24 there are, how many individuals or entities?

25 MR. WOODALL: I think at the moment -- I mean we're

1 not going to be advancing your inquiry much today by knowing
2 the number.

3 MR. BUCHHOLZ: I'm not asking the number. I asked
4 him whether he knows the number.

5 MR. WOODALL: I'm sorry. I apologize.

6 THE WITNESS: Yes.

7 BY MR. BUCHHOLZ:

8 Q And if I were to go through all of these entities
9 that are domiciled in foreign jurisdictions where you've
10 indicated you are not willing to provide the information, do
11 you know the information?

12 A Yes.

13 Q Okay. I just wanted to make that clear because I
14 hadn't asked that question yesterday.

15 Do you as an individual have an ownership interest
16 that is direct or indirect leading up to any of these
17 entities in foreign jurisdictions?

18 A I don't understand the question. "Leading up to"
19 confuses me.

20 Q What I'm trying to understand is whether or not you
21 are taking the position or your counsel is taking the
22 position that Mr. Pierce could be violating foreign laws to
23 disclose his own personal beneficial interest in these
24 companies?

25 MR. WELLS: No, I don't think that's the position

1 we've taken at all.

2 MR. BUCHHOLZ: So I'm not sure that that question
3 has been clearly asked, and I want to make sure that we do
4 that, whether Mr. Pierce himself has a beneficial interest
5 personally. And when I say "leading up to," I mean maybe
6 through other entities or organizations, but ultimately
7 whether Mr. Pierce himself has a beneficial interest in any
8 of these entities in the foreign jurisdictions, and we can go
9 through each one if we need to.

10 MR. WELLS: Well, instead of "leading up to," don't
11 you usually use the term "directly" or "indirectly"?

12 BY MR. BUCHHOLZ:

13 Q Sure. We can use the term "directly" or
14 "indirectly," as long as it is clear that that means whether
15 it's through any number of companies but ultimately leading
16 to you personally.

17 A Are we talking about the 13D now, or are we talking
18 about every foreign company that we've discussed?

19 Q Let's start with Newport.

20 A Can you ask a full question just so I --

21 Q Yes, I'd be happy to.

22 A Okay. Sorry.

23 Q Do you hold an ownership interest, directly or
24 indirectly, in Newport Capital Corp.?

25 A No.

1 Q Do you hold an ownership interest directly or
2 indirectly in any trust, any other legal entity or
3 organization that ultimately holds an ownership interest in
4 Newport?

5 A No.

6 Q Do any of your family members hold any beneficial
7 ownership interests in any entities, trusts, other legal
8 organizations that hold an ownership interest in Newport?

9 MR. WELLS: Well, now, I think unfortunately,
10 although your intentions are good, we are running into the
11 same problem of disclosing the identities of persons or
12 entities other than Mr. Pierce himself regarding ownership of
13 one of these foreign domiciled countries, and although it may
14 make sense to us that he would have the power to identify a
15 family member, I don't know that it does in some other
16 jurisdiction. Mr. Woodall is shaking his head over here,
17 too.

18 MR. WOODALL: I don't know whether it does either.

19 BY MR. BUCHHOLZ:

20 Q Do any of your family members in Canada or the US

21 --

22 MR. WELLS: No, that doesn't change --

23 MR. BUCHHOLZ: Well, we have a US lawyer and a
24 Canada lawyer right here.

25 MR. WELLS: But wherever the person lives, it may

1 violate the laws of Switzerland where Newport Capital has an
2 office if Mr. Pierce identifies an owner who resides in
3 Seattle.

4 MR. WOODALL: Yeah, and his family members are
5 separate individuals. Their rights are separate, their
6 interests are separate, their privacy interests are separate.
7 It may be at the end of the day that they are legitimate
8 answerable questions, or they may not be.

9 MR. WELLS: Maybe we can address this at a break
10 and take it up again.

11 MR. BUCHHOLZ: Okay. Are you instructing Mr.
12 Pierce not to inform the Commission in response to our
13 Commission -- in response to our question whether or not he
14 has family members who have beneficial ownership interests in
15 any entities or legal structures that hold interest in
16 Newport?

17 MR. WELLS: I'm advising him that he should refrain
18 from providing that answer until he has obtained the advice
19 of the appropriate legal counsel in the appropriate
20 jurisdiction.

21 BY MR. BUCHHOLZ:

22 Q Mr. Pierce, do you exercise any control whatsoever
23 through discussions, instructions over family members who
24 hold beneficial ownership interests through any other legal
25 entities in Newport?

1 MR. WELLS: Object to the term "control,"
2 particularly in the context of family relationships. It's
3 vague and --

4 MR. BUCHHOLZ: Will you allow him to answer the
5 question?

6 MR. WELLS: Certainly.

7 THE WITNESS: I guess I don't even understand the
8 question. So maybe you can do it again.

9 BY MR. BUCHHOLZ:

10 Q The family members who may potentially hold
11 beneficial ownership interest in Newport that I asked about
12 before, do you exercise any control over them? And by
13 "control," I mean through instructions of any kind related to
14 Newport?

15 MR. WELLS: Where -- I think the question is
16 regardless of Newport. I think the fairer question is do you
17 exercise any control in -- within some sort of meaning of
18 federal securities laws that I'm not sure this witness is
19 capable of answering as a layperson over his wife and his
20 daughter. Those are his family members.

21 MR. BUCHHOLZ: Well, I appreciate that. I wasn't
22 -- I didn't know which family members we were talking about
23 because he didn't answer that question.

24 MR. WELLS: I'm sorry. I thought he testified
25 earlier that he had a current wife and one daughter.

1 MR. BUCHHOLZ: Well, I don't know whether he has
2 parents or siblings or anyone else.

3 BY MR. BUCHHOLZ:

4 Q But regardless, and I added the "regarding Newport"
5 just to be more specific. I didn't want to it be -- and I'm
6 not asking whether or not you tell your daughter to go buy
7 groceries or something thing like that. This is specifically
8 regarding these companies we have been talking about.

9 And what I'm trying to figure out is whether or not
10 the ownership interest is held in a name or held by someone,
11 but that you are involved with the activities in connection
12 with these entities. That's what I want to understand.

13 So with regard to Newport --

14 A I'm obviously involved in activities. I mean I'm a
15 director and officer in the company. So I'm getting very
16 confused here as to -- if you understand what I'm saying.

17 Q Well, but let me just get back to the specific
18 question. And if the answer is "no" or "yes," or if there's
19 an objection and instruction not to answer, let it be the
20 case.

21 But with regard to Newport, do you give
22 instructions of any kind to family members regarding Newport
23 who have an ownership interest of any kind in Newport?

24 MR. WELLS: Well, now I'm going to have to give him
25 the same advice as to that particular question because the

1 question necessarily requires him to answer -- to identify a
2 family member if a family member is an owner.

3 MR. BUCHHOLZ: Regardless of whether the family
4 member is an owner --

5 MR. WELLS: Well, it's a different question.

6 MR. WOODALL: If no family member is an owner, then
7 the question is objectionable because it presupposes a family
8 member is an owner. If the family member is not an owner,
9 then the question makes no sense. So the only way the
10 question can be answered is by him implicitly identifying
11 whether a family member is directly or indirectly one of the
12 -- involved in one of the foreign entities.

13 MR. WELLS: In other words, it's an extraordinarily
14 good trick question. Again, if you want to move along, we
15 could confer briefly during a break and maybe take this up
16 again, if you would like.

17 BY MR. BUCHHOLZ:

18 Q Mr. Pierce, is your wife involved in the operations
19 of Newport?

20 A No.

21 BY MS. DAVIS:

22 Q Mr. Pierce, I'm looking at Exhibit 64, 13D filing,
23 Page 437.

24 A Hang on. I've got to find it. I'm on Page 37.

25 Q 437?

1 A Yes.

2 Q Okay. There's a -- at the top it says little iii,
3 "Shares held by Dana Pierce," ("Mrs. Pierce"), the wife of
4 Mr. Pierce"; do you see that?

5 A Yes, I do.

6 Q And I believe reading the chart, it indicates that
7 on January 23, 2006, and April 17, 2006, and May 26, 2006,
8 Mrs. Pierce was the owner of 45,000 shares of Lexington
9 Resources stock on each of those dates; do you see that?

10 A Yes.

11 Q Is that how you read that, as well?

12 A Yes.

13 Q All right. How did your wife become the owner of
14 those 45,000 shares on each of those dates of Lexington
15 Resources stock?

16 A I believe that she purchased stock through her
17 brokerage account. And my recollection is that she purchased
18 it before the stock split, and that's how she ended up with
19 45,000 shares.

20 Q And did you instruct your wife at all with respect
21 to the purchase of those shares?

22 A She deals independently with her broker.

23 Q Okay, but did you have -- okay. Did you have any
24 discussions with her wife about the purchase of those shares
25 of Lexington Resources stock?

1 MR. WELLS: Is that privileged?

2 MS. DAVIS: Whether he answers the question is not
3 privileged. The time --

4 MR. WELLS: Sorry. I'm asking the Canadian lawyer
5 sitting next to me. I'm not concerned about the US.

6 THE WITNESS: I may have suggested to her to
7 purchase stock.

8 MS. DAVIS: Okay. Thank you.

9 BY MR. BUCHHOLZ:

10 Q Who is her broker?

11 A Canacord Capital. C-A-N-C-A-O-R-R-D, Capital, I
12 believe. I might have spelled it wrong.

13 MR. WOODALL: I think it's C-A-N-A-C-O-R-D.

14 BY MR. BUCHHOLZ:

15 Q Does she work with a particular broker there?

16 A Yes.

17 Q Do you know his name?

18 A Michael Cassady.

19 Q How do you spell Cassady?

20 A C-A-S-S-A-D-Y.

21 Q Regarding the other foreign entities that we have
22 talked about, Sparten, Parc Place, Pacific Rim, IMT AG, are
23 you willing to tell us whether or not a family member of
24 yours holds a beneficial ownership interest in those
25 entities?

1 MR. WELLS: I'm going to give Mr. Pierce the same
2 advice we've been giving the questions along those very same
3 lines, that he should obtain an opinion of legal counsel from
4 the appropriate jurisdiction before answering.

5 BY MR. BUCHHOLZ:

6 Q I'm handing you a document, Mr. Pierce, that was
7 previously marked as Exhibit 61. I'd like to ask you a
8 question about one specific page of this. For the record,
9 the pages are labeled TRON 4651 through 4670. It's a
10 transfer agent file from X-Clearing related to issuance of
11 80,000 shares to you, but the page I want to ask about is
12 actually a corporate resolution page related to Newport
13 Capital, and it's Page TRON 4654.

14 Do you see that page?

15 A Not yet. I see the page.

16 Q Is that your signature where it states "Brent
17 Pierce, president/treasurer"?

18 A Appears to be.

19 Q Do you recognize the signature at the bottom of the
20 page for Cockburn Secretaries Limited?

21 A Not sure whose signature that is.

22 Q Is Cockburn Secretaries affiliated with Cockburn
23 Directors that we spoke about yesterday?

24 A I wouldn't know to provide the answer to that.

25 Q Is it correct that as of 19th of March, 2004, as it

1 could certain provide you the information. I did provide my
2 bank accounts to you, so.

3 Q Your bank account --

4 A I did provide you -- you asked me yesterday where
5 my personal bank accounts were.

6 Q Right, right. You listed them, yes.

7 A Right.

8 Q And you're willing to provide statements from the
9 personal bank accounts?

10 A I said that I was willing to provide you any
11 information regarding this, where the funds went. You asked
12 -- if you wanted any specific information regarding that,
13 that's fine. And then I also said that I was prepared to
14 provide you Brent Pierce's trading. Do you remember the --

15 Q Right, the trading summary --

16 A Yes.

17 Q -- that would cover all of the Lexington trading?

18 A Yes, yes.

19 Q We talked a little yesterday about the trading that
20 you did in Lexington securities through US brokerages for
21 some entities, and we talked about Newport and Sparten and
22 Pacific Rim. I'm not sure if we talked about Parc Place?

23 A No, we didn't.

24 Q Did you do any trading in Lexington securities at
25 US brokerages for Parc Place?

1 A No.

2 Q Did you do trading in Lexington securities at
3 brokerages outside the US for Parc Place?

4 A No.

5 Q Other than the entities we have already discussed,
6 did you do trading in Lexington Resources securities in US
7 brokerage accounts for any other entities?

8 MR. WELLS: I'm sorry. Could you rephrase that?
9 Reask that question. I don't think I followed.

10 BY MR. BUCHHOLZ:

11 Q Okay. Other than the individual accounts of yours
12 that we've discussed and the entity accounts that we have
13 discussed --

14 A "You" meaning?

15 Q Meaning Newport, Sparten, Pacific Rim, and Parc
16 Place, did you trade in Lexington securities in any US
17 brokerage accounts for any other individuals or entities?

18 A I don't believe so.

19 Q And now the same question but with regard to
20 outside the US brokerage accounts, and it's just a "yes" or
21 "no" question: Did you trade Lexington securities in
22 brokerage accounts outside of the US for any other
23 individuals or entities?

24 A Personally?

25 Q Yes.

1 A No.

2 Q Did you personally direct or instruct trading?

3 A I don't understand the question. I think it's the
4 same, isn't it?

5 Q Right. I just wanted to make sure that when you
6 said "personally" you didn't mean for personal accounts.

7 You mean did you --

8 A Yeah, I mean --

9 Q -- personally direct the trading?

10 A No.

11 Q That's what I meant, and your response is "no"?

12 A No.

13 Q And when you said that you didn't do any trading in
14 the US or at US brokerages for any other accounts other than
15 the ones we've discussed, does that include accounts in the
16 names of family members?

17 A My family members have never had accounts in the
18 United States, unless there's something I don't know about.
19 And if so, I should clarify that.

20 Q You are not aware of any?

21 A No.

22 Q Did you direct trading of Lexington Resources
23 securities in any accounts of family members in Canada?

24 A No.

25 Q Earlier we talked about the, at least suggestion,

1 Islands?

2 A No.

3 MR. BUCHHOLZ: Okay. At this point, I want to make
4 it clear that our position, as we stated earlier, is that we
5 have the subpoena. There's obviously information related to
6 a lot of these entities that we feel we have requested and
7 are entitled to, and we've agreed with your counsel that you
8 are going to, as quickly as possible, confirm whether you
9 will provide that information or whether your counsel will
10 instruct you not to provide that information. Do you agree?

11 THE WITNESS: Yeah.

12 MR. BUCHHOLZ: And, Counsel, do you want to state
13 anything further about that?

14 MR. WELLS: Nothing.

15 MR. BUCHHOLZ: Is there anything before we go off
16 the record today that you want to clarify about anything
17 you've said in the testimony today or yesterday?

18 THE WITNESS: Not that I can think of right now.

19 MR. BUCHHOLZ: Counsel, do you want to ask anything
20 to clarify?

21 MR. WELLS: No. I think we are pressed for time,
22 and we might as well wait until a better opportunity.

23 MR. BUCHHOLZ: Okay. All right. So we will
24 adjourn the testimony for today to be continued at a later
25 date. Off the record at 12:55 p.m.

PROOFREADER'S CERTIFICATE1
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In the Matter of: LEXINGTON RESOURCES, INC.
Witness: Brent Pierce
File Number: SF-02989-A
Date: Friday, July 28, 2006
Location: Seattle, WA

This is to certify that I, Laurie Andrews (the undersigned), do hereby swear and affirm that the attached proceedings before the U.S. Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

Laurie Andrews

(Proofreader's Name)

8/16/06

(Date)

1 STATE OF WASHINGTON) I, Judy Steenbergen-Webb, CCR, RPR,
2 County of King) ss CCR #2495, a duly authorized
3 Notary Public in and for the State
4 of Washington, residing at
5 Sammamish, do hereby certify:

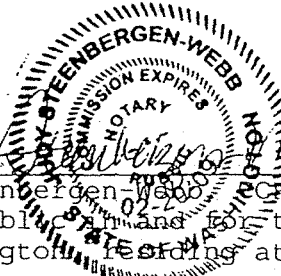
6 That the foregoing examination of Brent Pierce,
7 Vol. 2 was taken before me and completed on July 28, 2006, and
8 thereafter was transcribed under my direction; that the
9 deposition is a full, true and complete transcript of the
10 testimony of said witness, including all questions, answers,
11 objections, motions and exceptions;

12 That the witness, before examination, was duly
13 sworn to testify the truth, the whole truth, and nothing but
14 the truth;

15 That I am not a relative, employee, attorney or
16 counsel of any party to this action or relative or employee of
17 any such attorney or counsel and that I am not financially
18 interested in the said action or the outcome thereof;

19 That I am herewith securely sealing the said
20 deposition and promptly delivering the same to
21 Attorney Steven Buccholz.

22 IN WITNESS WHEREOF, I have hereunto set my hand
23 and affixed my official seal this 10th day of
24 August, 2006.

25

Judy Steenbergen-Webb, CCR, RPR,
Notary Public in and for the State
of Washington, residing at
Sammamish.



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
SAN FRANCISCO DISTRICT OFFICE
44 Montgomery Street
SUITE 2600
SAN FRANCISCO, CALIFORNIA 94104

D
COPY

DIRECT DIAL: 415-293-0312
FAX NUMBER: 415-705-2331
BUCHHOLZ@SEC.GOV

August 24, 2006

Via Email to wellsc@lanepowell.com
And Via U.S. Mail

Christopher B. Wells, Esq.
Lane Powell P.C.
1420 Fifth Avenue, Suite 4100
Seattle, WA 98101

Re: *In the Matter of Lexington Resources, Inc. (SF-2989)*

Dear Mr. Wells:

This letter is regarding information pertaining to non-U.S. entities and individuals that your client Brent Pierce would not provide the staff during his testimony on July 27 and 28, 2006. As we have discussed, many of the non-U.S. entities have been identified in SEC filings as beneficial owners of Lexington Resources securities. Mr. Pierce and his counsel have now had nearly one month to determine whether Mr. Pierce will provide the information or whether counsel will instruct Mr. Pierce not to provide the information, and if so, on what specific grounds.

It is the staff's understanding based on our telephone conversation today that you will inform the staff of Mr. Pierce's position no later than the week of September 5, 2006.

If you have any questions, please call me at 415-293-0312.

Sincerely,

Steven D. Buchholz
Staff Attorney, Office of Enforcement

Encl: Form 1662

SEC 03961

F

Buchholz, Steven

From: Wells, Christopher [WellsC@LanePowell.com]
Sent: Friday, August 25, 2006 11:53 AM
To: Buchholz, Steven
Subject: RE: Letter re SEC file no. SF-2989

Mr. Buchholz:

Just to make sure that there is no miscommunication, before I depart on vacation, I wanted to respond to the paragraph in your letter about informing the staff of Mr. Pierce's position.

When we spoke on the phone, I agreed to forward your request for a response no later than the week of Sept. 5 to Mr. Pierce's British Columbia attorneys, who will be coordinating with lawyers in other jurisdictions where the companies at issue are domiciled or operate. I did not assure you that a response would be available by that week, but your letter conveys "the staff's understanding" that Mr. Pierce will inform you of his position by then. That will not likely be the case, unless you mean to include notice by that week of when Mr. Pierce anticipates resolving his position. As you know, Mr. Pierce's chief BC attorney has been out on vacation, I am going out on vacation, and attorneys in other foreign jurisdictions have likely been on vacation this month. That is a problem this time of year, and Mr. Pierce himself may have had long-established vacation plans. Mr. Pierce is eager to resolve this issue, so we will keep you posted. But we cannot control the schedules of overseas counsel. Hopefully, we can provide you a progress report during the week of Sept. 5.

I have forwarded your letter on to Mr. Pierce's BC law firm.

Christopher Wells



Partner
Lane Powell PC
1420 Fifth Avenue, Suite 4100
Seattle, WA 98101-2338
Direct: 206.223.7084
Cell: 206.650.9882
www.lanepowell.com

From: Buchholz, Steven [mailto:BuchholzS@sec.gov]
Sent: Thursday, August 24, 2006 2:26 PM
To: Wells, Christopher
Subject: Letter re SEC file no. SF-2989

Mr. Wells:

Attached is the letter, as we discussed.

<<Pierce- Wells ltr (06-08-24).pdf>>
Best regards,
Steve

Steven D. Buchholz | U.S. Securities & Exchange Commission |

SEC 03956

8/25/2006

44 Montgomery Street, Suite 2600 | San Francisco, CA 94104 |
415-293-0312 (tel) | 415-705-2331 (fax) | buchholzs@sec.gov |

This e-mail message (and any attachments) from the U.S. Securities and Exchange Commission is for the exclusive use of the intended recipient(s) and may contain confidential and privileged information. If you are not the intended recipient, please do not read, distribute, or take action in reliance upon the message. If you have received this message in error, please notify the sender immediately by return e-mail and promptly delete this message and its attachments from your computer system. Be advised that no privileges are waived by the transmission of this message.

This message is private or privileged. If you are not the person for whom this message is intended, please delete it and notify me immediately, and please do not copy or send this message to anyone else.

Please be advised that, if this communication includes federal tax advice, it cannot be used for the purpose of avoiding tax penalties unless you have expressly engaged us to provide written advice in a form that satisfies IRS standards for "covered opinions" or we have informed you that those standards do not apply to this communication.

SEC 03957

8/25/2006

FILE COPY SF-2989**Buchholz, Steven**

From: Wells, Christopher [WellsC@LanePowell.com]
Sent: Friday, September 15, 2006 11:49 AM
To: Buchholz, Steven
Subject: Confirmation of voice mail last week

Mr. Buchholz,

I did not hear back from you after I left my voicemail for you last week. This is to confirm my message that Brent Pierce is travelling and spending 3 weeks out of four abroad. Two weeks are for a postponed family vacation. During his travels, Mr. Pierce plans to consult legal counsel abroad, then coordinate with legal counsel where he resides, in Vancouver, BC. As I mentioned, Mr. Pierce plans to tell you by mid-October whether he will respond to your requests to identify owners and provide other non-public information about the foreign companies domiciled in countries believed to have problematic privacy/secretcy laws.

Christopher Wells



Partner
Lane Powell PC
1420 Fifth Avenue, Suite 4100
Seattle, WA 98101-2338
Direct: 206.223.7084
Cell: 206.650.9882
www.lanepowell.com

This message is private or privileged. If you are not the person for whom this message is intended, please delete it and notify me immediately, and please do not copy or send this message to anyone else.

Please be advised that, if this communication includes federal tax advice, it cannot be used for the purpose of avoiding tax penalties unless you have expressly engaged us to provide written advice in a form that satisfies IRS standards for "covered opinions" or we have informed you that those standards do not apply to this communication.

SEC 03953

9/18/2006

1 UNITED STATES OF AMERICA
2 BEFORE THE
3 SECURITIES AND EXCHANGE COMMISSION



4 **CERTIFIED**
5 **TRANSCRIPT**

6 -----
6 In the Matter of)
7 Gordon Brent Pierce,) Administrative Proceeding
8 Newport Capital Corp.,) File No. 3-13927
9 and Jenirob Company Ltd.,)
10 Respondents.)
11 -----

12
13
14
15 Proceedings before Administrative Law Judge
16 CAMERON ELLIOT, Wednesday, June 8, 2011 commencing at
17 10:00 a.m., held at the offices of The United States
18 Securities and Exchange Commission, 100 F Street, N.E.,
19 Washington, D.C., before Keith Wilkerson, a notary
20 public in and for the District of Columbia.
21
22
23
24

25 PAGES 1 - 86

Page 1

1 P R O C E E D I N G S

2 THE COURT: Good morning. We're here in the
3 matter of Gordon Brent Pierce, Securities & Exchange
4 Commission Administrative Proceeding File No. 3-13927.
5 May I have appearances from counsel, please?

6 MS. ANDERSON: Good morning, Your Honor.
7 Judith Anderson from the Division of Enforcement, and
8 with me is Steven Buchholz, also from the Division.

9 MR. ALDERMAN: Good morning, Your Honor.
10 William Alderman of Orrick, Herrington & Sutcliffe in
11 San Francisco, and with me are my colleagues Russell
12 Duncan and Justin Bagdady from our Washington, D.C.
13 office.

14 THE COURT: We're here for an oral argument,
15 and before we get to the actual argument itself I hope
16 you'll indulge me. There are a couple of things I
17 wanted to talk about. I hope they're not controversial.
18 First of all, Mr. Alderman, you have filed a motion to
19 have Judge Foelak withdraw from the case. Would you
20 object if I denied that as moot?

21 MR. ALDERMAN: No, I would not.

22 THE COURT: Now, when I took over the case,
23 initially I noticed that the parties had agreed to
24 disposition by way of summary disposition, and at first
25 I thought that there really weren't a lot of factual

1 disputes in the case. It really does seem to be mainly
2 about legal issues. But as I read through the briefs, I
3 started to notice that there may end up being some
4 factual matters that would have to be resolved. Now,
5 normally, of course, in a summary disposition proceeding
6 if there are disputed issues of fact, then I would not
7 resolve them at that stage. We'd have to have a
8 hearing.

9 I have interpreted the parties' agreement to
10 a summary disposition as essentially a waiver of a
11 hearing so that any disputed issues of fact I would
12 resolve on paper. And I've sometimes heard this
13 referred to as the "case stated procedure." You state
14 your case on paper and then the judge just resolves all
15 issues.

16 However, I'm a little concerned that maybe
17 my understanding of these things is not what the parties
18 understand, so I want to try to inquire a little bit
19 about this. And let me be a little bit clearer. If I
20 do resolve any disputed issues of fact and a party wants
21 to appeal my decision, you would not be able to appeal
22 my decision on the basis that there were disputed issues
23 of fact and we should have had a hearing. You may be
24 able to appeal on any other ground, of course, but you
25 wouldn't be able to say we should have had a hearing.

1 Now, let me ask Ms. Anderson: Is this your
2 understanding of what the posture of the case is?

3 MS. ANDERSON: At this point, yes, Your
4 Honor.

5 THE COURT: And it is acceptable to you
6 doing it this way?

7 MS. ANDERSON: Yes, it is.

8 THE COURT: All right. And Mr. Alderman?

9 MR. ALDERMAN: I think I'm a little less
10 clear than Ms. Anderson might be on that because I
11 wasn't involved in the pre-hearing conference where I
12 gather whatever agreement Your Honor's referring to was
13 made; but I don't have any objection to having any
14 disputed factual issues being resolved by Your Honor on
15 papers without a hearing as long as the parties have an
16 opportunity to brief whatever those issues may be.

17 THE COURT: Well, I wasn't going to ask for
18 any more briefing. I think that it's pretty complete at
19 this point. Now, if something comes up today and the
20 parties feel like they need to brief it some more, then
21 I'll consider that, but as far as I'm concerned the
22 briefing is done. Well, let me put it this way. If you
23 change your mind, if you think that we should have a
24 hearing because of what we've discussed here today, then
25 let me know at the end of the hearing and I'll take it

1 up again.

2 MR. ALDERMAN: That's fair. Thank you.

3 MS. ANDERSON: Thank you, Your Honor.

4 THE COURT: So for now, then, I find that
5 the parties have given a knowing waiver of their right
6 to a hearing, and we'll just proceed that way, but
7 that's subject to reconsideration.

8 So as far as the argument goes, I am
9 intending to give the parties one hour per side, and you
10 can divide that up however you'd like between opening
11 and rebuttal. Because the Division has the burden, they
12 get to go first, and because there's a cross-motion
13 Mr. Pierce gets to go last. What I was thinking we
14 would do is Division has its opening, Mr. Pierce
15 presents its opening, Division with rebuttal, Mr. Pierce
16 with rebuttal, and then we'd stop.

17 Now, I may have some questions over the
18 course of the hearing, I'll try to keep those to a
19 minimum, but if my questions take up too much time I'll
20 give you more time. And certainly if you don't feel the
21 need to take up the whole hour, please don't. Any other
22 matters we need to take up before we start?

23 MS. ANDERSON: I guess, Your Honor, there is
24 one matter, which is that we have prepared a one-page
25 demonstrative exhibit to use. We don't have a big

1 MR. ALDERMAN: No. I'm talking about the
2 objections that were made both to the informal request
3 for production by the Division here and in the
4 objections to the subpoena that was issued to
5 Mr. Pierce.

6 THE COURT: So you're saying that it would
7 have been illegal for Mr. Pierce to turn over the
8 records of Newport and Jenirob.

9 MR. ALDERMAN: I'm saying something a little
10 different than that. What I'm saying is that
11 Liechtenstein law at the time created an inviolable
12 right of privacy in those documents. Mr. Pierce didn't
13 have unilateral authority from Newport or Jenirob,
14 there's no evidence that he did, to turn over records
15 that Liechtenstein law at the time protected from
16 disclosure. So we really have two issues here. One is
17 what could Mr. Pierce have done, and the other is what
18 could the FMA have done. I want to make sure there's no
19 confusion about that.

20 THE COURT: Well, I think that's an
21 important thing to clear up, because eventually it was
22 found out from the FMA, through the records supplied by
23 the FMA, that Mr. Pierce was the beneficial owner of --
24 and I want to be precise about this -- the beneficial
25 owner of the assets in the Newport account and the

1 suggestion that they are relying on any evidence in this
2 case that wasn't also available to them and produced to
3 Mr. Pierce in connection with the first case.

4 The claim that there is something truly new
5 here that wasn't addressed and could not have been
6 addressed in the first case is simply not the case. The
7 cases on res judicata are abundantly clear that they are
8 bound by the consequences of having not only put the
9 facts relating to the Newport and Jenirob sales into
10 play in the first case and then choosing to abandon them
11 when the initial decision didn't buy their argument,
12 they simply have to live with the consequences of those
13 tactical choices, and res judicata should be applied.

14 THE COURT: All right. Thank you very much.
15 Mr. Alderman, let me ask you this. I just want to
16 follow up on what I started out talking about. Are you
17 still agreeable to having me resolve any disputed issues
18 of fact in this case?

19 MR. ALDERMAN: I guess I'm not clear what
20 the potential universe of those would be. If there are
21 facts that Your Honor views as in dispute, then I think
22 it would be useful for both parties to have the
23 opportunity to address them in whatever detail may be
24 necessary. Among the issues, for example, they sort of
25 indirectly are attempting to rely on this Little

1 declaration with respect to calculations. Although they
2 didn't submit it again in connection with this motion,
3 they make reference to it as something that was
4 submitted in the prior sanctions motion with respect to
5 Newport and Jenirob.

6 There are issues with that declaration that
7 if Your Honor were to rule against us on res judicata,
8 which frankly we don't anticipate, then that would be an
9 issue that I think would be appropriate to address. And
10 if Your Honor has other factual questions in mind, then
11 I think it would be helpful to both sides if they were
12 articulated and the parties had at least a brief, and by
13 "brief" I mean like five pages, an opportunity to
14 address them.

15 THE COURT: Well, I don't know that the
16 Little document is a particularly good example of this
17 because it was referenced in the -- well, it was
18 referenced in the Division's motion for summary
19 disposition, incorporated by reference in order to among
20 other things just establish what the amount of
21 disgorgement sought would be. Mr. Pierce had a chance
22 to respond to whatever the Division had to say about the
23 Little declaration, but I don't recall any objections to
24 it at that time. I'm not sure that's the best example.

25 However, one thing that has come up here

1 today which might be a better example is this question
2 of what did Mr. Pierce say when he was testifying during
3 the investigation and how does that bear upon his
4 ownership of Newport and Jenirob versus his ownership of
5 the shares in the Newport and Jenirob accounts, was he
6 the beneficial owner, did he have an interest, and was
7 that referring to the companies themselves or just the
8 shares in the account. That's something that I may have
9 to reach. The parties dispute it, and so if I do have
10 to reach it I may need to resolve some disputed issues.

11 Mr. Alderman, are you saying you want a live
12 hearing with live testimony?

13 MR. ALDERMAN: No. I'm perfectly
14 comfortable with the idea that whatever factual issues
15 need to be resolved because they're in dispute could be
16 resolved on the papers, as long as the parties have the
17 opportunity to present the papers.

18 THE COURT: Here's what I think we should
19 do. I am actually very interested in seeing
20 Mr. Pierce's objections to the Division's subpoena and
21 document request.

22 MR. ALDERMAN: I gathered that, and we would
23 be happy to provide that.

24 THE COURT: So here's what we'll do. I
25 don't want anything more than opening briefs. I think

1 that we've covered the issues here pretty thoroughly. I
2 don't think we need to have opening briefs and then
3 replies and so forth. I just want opening briefs. I
4 want to limit the opening briefs to no more than ten
5 pages. We'll call it post oral argument briefs. I'll
6 limit it to ten pages, and you can supply whatever
7 additional documentary materials you think are
8 appropriate based on what we've talked about here today.

9 One thing I'm particularly interested in
10 seeing, and you can both submit it if you want, is, as I
11 say, Mr. Pierce's objections to the document request
12 from the Division. If you think something else should
13 be in the record based on what we've talked about here
14 today that's not, then you can add that also.

15 I'll give you two weeks. Today is the 8th.
16 Let's make this due June 22.

17 MR. DUNCAN: Your Honor, if I may,
18 Mr. Bagdady and I will be involved in a hearing next
19 week up in New York. We're going to be tied up the next
20 seven days or so on that hearing.

21 THE COURT: So I'll give you three weeks,
22 then, so let's say June 29th.

23 MR. DUNCAN: Thank you, Your Honor.

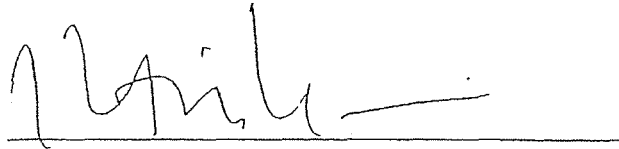
24 THE COURT: Any objection to this?

25 MR. ALDERMAN: Not from our side, Your

CERTIFICATE OF REPORTER

I, Keith A. Wilkerson, Court Reporter, do hereby testify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

A handwritten signature in cursive script, appearing to read "Keith A. Wilkerson", is written over a horizontal line.

KEITH A. WILKERSON

H

Securities and Exchange Commission
Division of Enforcement



Enforcement Manual

Office of Chief Counsel

February 8, 2011

2.4 The Wells Process

The Wells Notice:

Rule 5(c) of the SEC's Rules on Informal and Other Procedures states that "[u]pon request, the staff, in its discretion, may advise such persons [involved in

preliminary or formal investigations] of the general nature of the investigation, including the indicated violations as they pertain to them, and the amount of time that may be available for preparing and submitting a statement prior to the presentation of a staff recommendation to the Commission for the commencement of an administrative or injunction proceeding.” 17 C.F.R. Section 202.5(c).

This “Wells notice” evolved from recommendations made by an advisory committee chaired by John Wells. Staff should refer back to the intent of the original “Wells Release,” in making determinations regarding Wells notices. *See Securities Act of 1933 (“Securities Act”) Release No. 5310, “Procedures Relating to the Commencement of Enforcement Proceedings and Termination of Staff Investigations.”* As the Commission stated in the Wells Release, “[t]he Commission, however, is also conscious of its responsibility to protect the public interest. It cannot place itself in a position where, as a result of the establishment of formal procedural requirements, it would lose its ability to respond to violative activities in a timely fashion.”

Providing a Wells Notice:

The objective of the Wells notice is, as the Commission stated in the Wells Release, “... not only to be informed of the findings made by its staff but also, where practicable and appropriate, to have before it the position of persons under investigation at the time it is asked to consider enforcement action.”

The Wells notice should tell a person involved in an investigation that 1) the Division is considering recommending or intends to recommend that the Commission file an action or proceeding against them; 2) the potential violations at the heart of the recommendation; and 3) the person may submit arguments or evidence to the Division and the Commission regarding the recommendation and evidence. The staff is required to obtain an Associate Director or Regional Director’s approval before issuing a Wells notice or determining to recommend an enforcement action without issuing a Wells notice.

To determine whether or when to provide a Wells notice consider:

- Whether the investigation is substantially complete as to the recipient of the Wells notice.
- Whether immediate enforcement action is necessary for the protection of investors. If prompt enforcement action is necessary to protect investors, providing a Wells notice and waiting for a submission may not be practical (for example, a recommendation to file an emergency action requesting a temporary restraining order and asset freeze to stop an ongoing fraud). In addition, providing a Wells notice may alert potential defendants to the possible asset freeze and put at risk the investor funds that the recommendation is intended to protect.

The Content of the Wells Notice:

A Wells notice should be in writing when possible. If a Wells notice is given orally, it should be followed promptly by written confirmation. If the staff intends to provide a written Wells notice, the staff may give advance notice of the intention to the recipient or his counsel by telephone. As in a Wells notice, the substance of a Wells call should follow the guidance below, but the staff also may refer to specific evidence regarding the facts and circumstances which form the basis for the staff's recommendations.

The written Wells notice or written confirmation of an oral Wells notice should:

- identify the specific charges the staff is considering recommending to the Commission
- accord the recipient of the Wells notice the opportunity to provide a voluntary statement, in writing or on videotape, arguing why the Commission should not bring an action against them or bringing any facts to the Commission's attention in connection with its consideration of this matter
- set reasonable limitations on the length of any submission made by the recipient (typically, written submissions should be limited to 40 pages, not including exhibits, and video submissions should not exceed 12 minutes), as well as the time period allowed for the recipients to submit a voluntary statement in response to the Wells notice
- advise the recipient that any submission should be addressed to the appropriate Assistant Director
- inform the recipient that any Wells submission may be used by the Commission in any action or proceeding that it brings and may be discoverable by third parties in accordance with applicable law
- attach a copy of the Wells Release, Securities Act Release No. 5310
- attach a copy of the SEC's Form 1662 ("Supplemental Information for Persons Requested to Supply Information Voluntarily or Directed to Supply Information Pursuant to a Commission Subpoena")

Acceptance of a Wells Submission:

As discussed above, a Wells notice informs a recipient that they may make a voluntary submission to the Commission regarding the Division's proposed

recommendation. However, there are circumstances in which the staff may reject a Wells submission:

- If the Wells submission exceeds the limitations on length specified in the Wells notice, the staff may reject the submission.
- The staff may determine not to grant a recipient's request for an extension of time. Requests for extensions of time should be made in writing, clearly state the basis for the request, and be directed to the appropriate Assistant Director.
- The staff may reject a submission if the person making the submission limits its admissibility under Federal Rule of Evidence 408 or otherwise limits the Commission's ability to use the submission pursuant to Form 1662.

Wells submissions will be provided to the Commission along with any recommendation from the staff for an unsettled action against the recipient of the Wells notice.

The Post-Notice Wells Process:

- Recipients of Wells notices occasionally request to review portions of the staff's investigative file. On a case-by-case basis, it is within the staff's discretion to allow the recipient of the notice to review portions of the investigative file that are not privileged. In considering a request for access to portions of the staff's investigative file, the staff should keep in mind, among other things:
 - whether access to portions of the file would be a productive way for both the staff and the recipient of the Wells notice to assess the strength of the evidence that forms the basis for the staff's recommendations;
 - whether the prospective defendant or respondent failed to cooperate, invoked his Fifth Amendment rights, or otherwise refused to testify during the investigation; and
 - the stage of the investigation with regard to other persons or witnesses, including whether certain witnesses have yet to provide testimony.
- Recipients of Wells notices may request meetings with the staff to discuss the substance of the staff's proposed recommendation to the Commission. Assigned staff should consult with supervisors if a request is made. A Wells recipient generally will not be accorded more than one post-Wells notice meeting.
- The staff may engage in appropriate settlement discussions with the recipient of the Wells notice. However, the staff may choose to inform the recipient that the staff will not engage in ongoing settlement discussions that would delay timely consideration of the matter by the Commission.

Text of the Commission's Wells Release:

PROCEDURES RELATING TO THE COMMENCEMENT OF ENFORCEMENT
PROCEEDINGS AND TERMINATION OF STAFF INVESTIGATIONS

SECURITIES ACT OF 1933, Release No. 5310; SECURITIES
EXCHANGE ACT OF 1934, Release No. 9796; INVESTMENT COMPANY
ACT OF 1940, Release No. 7390; INVESTMENT ADVISORS ACT OF
1940, Release No. 336

September 27, 1972

The Report of the Advisory Committee on Enforcement Policies and Practices, submitted to the Commission on June 1, 1972, contained several recommendations designed to afford persons under investigation by the Commission an opportunity to present their positions to the Commission prior to the authorization of an enforcement proceeding.² These procedural measures, if adopted, would in general require that a prospective defendant or respondent be given notice of the staff's charges and proposed enforcement recommendation and be accorded an opportunity to submit a written statement to the Commission which would accompany the staff recommendation. The objective of the recommended procedures is to place before the Commission prior to the authorization of an enforcement proceeding the contentions of both its staff and the adverse party concerning the facts and circumstances which form the basis for the staff recommendation.³

The Commission has given these recommendations careful consideration. While it agrees that the objective is sound, it has concluded that it would not be in the public interest to adopt formal rules for that purpose. Rather, it believes it necessary and proper that the objective be attained, where practicable, on a strictly informal basis in accordance with procedures which are now generally in effect.

² See Report of the Advisory Committee on Enforcement Policies and Practices, June 1, 1972, page 31 et seq.

³ It should be noted that the obtaining of a written statement from a person under investigation is expressly authorized by Section 20(a) of the Securities Act of 1933 and Section 21(a) of the Securities Exchange Act of 1934. Section 21(a) of the Exchange Act provides as follows:

"The Commission may, in its discretion, make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this title or any rule or regulation thereunder, and may require or permit any person to file with it a statement in writing, under oath or otherwise as the Commission shall determine, as to all the facts and circumstances concerning the matter to be investigated. . . ."

The Commission desires not only to be informed of the findings made by its staff but also, where practicable and appropriate, to have before it the position of persons under investigation at the time it is asked to consider enforcement action.

The Commission, however, is also conscious of its responsibility to protect the public interest. It cannot place itself in a position where, as a result of the establishment of formal procedural requirements, it would lose its ability to respond to violative activities in a timely fashion.

The Commission believes that the adoption of formal requirements could seriously limit the scope and timeliness of its possible action and inappropriately inject into actions it brings issues, irrelevant to the merits of such proceedings, with respect to whether or not the defendant or respondent had been afforded an opportunity to be heard prior to the institution of proceedings against him and the nature and extent of such opportunity.

The Commission is often called upon to act under circumstances which require immediate action if the interests of investors or the public interest are to be protected. For example, in one recent case involving the insolvency of a broker-dealer firm, the Commission was successful in obtaining a temporary injunctive decree within 4 hours after the staff had learned of the violative activities. In cases such as that referred to, where prompt action is necessary for the protection of investors, the establishment of fixed time periods, after a case is otherwise ready to be brought, within which proposed defendants or respondents could present their positions would result in delay contrary to the public interest.

The Commission, however, wishes to give public notice of a practice, which it has heretofore followed on request, of permitting persons involved in an investigation to present a statement to it setting forth their interests and position. But the Commission cannot delay taking action which it believes is required pending the receipt of such a submission, and, accordingly, it will be necessary, if the material is to be considered, that it be timely submitted. In determining what course of action to pursue, interested persons may find it helpful to discuss the matter with the staff members conducting the investigation. The staff, in its discretion, may advise prospective defendants or respondents of the general nature of its investigation, including the indicated violations as they pertain to them, and the amount of time that may be available for preparing a submission. The staff must, however, have discretion in this regard in order to protect the public interest and to avoid not only delay, but possible untoward consequences which would obstruct or delay necessary enforcement action.

Where a disagreement exists between the staff and a prospective respondent or defendant as to factual matters, it is likely that this can be resolved in an orderly manner only through litigation. Moreover, the Commission is not in a position to, in effect, adjudicate issues of fact before the proceeding has been commenced and the evidence placed in the record. In addition, where a proposed administrative proceeding is

involved, the Commission wishes to avoid the possible danger of apparent prejudice involved in considering conflicting contentions, especially as to factual matters, before the case comes to the Commission for decision. Consequently, submissions by prospective defendants or respondents will normally prove most useful in connection with questions of policy, and on occasion, questions of law, bearing upon the question of whether a proceeding should be initiated, together with considerations relevant to a particular prospective defendant or respondent which might not otherwise be brought clearly to the Commission's attention.

Submissions by interested persons should be forwarded to the appropriate Division Director or Regional Administrator with a copy to the staff members conducting the investigation and should be clearly referenced to the specific investigation to which it relates. In the event that a recommendation for enforcement action is presented to the Commission by the staff, any submissions by interested persons will be forwarded to the Commission in conjunction with the staff memorandum.

It is hoped that this release will be useful in encouraging interested persons to make their views known to the Commission and in setting forth the procedures by which that objective can best be achieved.

The Advisory Committee also recommended that the Commission should adopt in the usual case the practice of notifying a person who is the subject of an investigation, and against whom no further action is contemplated, that the staff has concluded its investigation of the matters referred to in the investigative order and has determined that it will not recommend the commencement of an enforcement proceeding against him.⁴

We believe this is a desirable practice and are taking steps to implement it in certain respects. However, we do not believe that we can adopt a rule or procedure under which the Commission in each instance will inform parties when its investigation has been concluded. This is true because it is often difficult to determine whether an investigation has been concluded or merely suspended, and because an investigation believed to have been concluded may be reactivated as a result of unforeseen developments. Under such circumstances, advice that an investigation has been concluded could be misleading to interested persons.

The Commission is instructing its staff that in cases where such action appears appropriate, it may advise a person under inquiry that its formal investigation has been terminated. Such action on the part of the staff will be purely discretionary on its part for the reasons mentioned above. Even if such advice is given, however, it must in no way be construed as indicating that the party has been exonerated or that no action may ultimately result from the staff's investigation of that particular matter. All that such a communication means is that the staff has completed its investigation and that at that time no enforcement action has been recommended to the Commission. The attempted use of such a communication as a purported defense in any action that might subsequently be

⁴ Report, page 20.

brought against the party, either civilly or criminally, would be clearly inappropriate and improper since such a communication, at the most, can mean that, as of its date, the staff of the Commission does not regard enforcement action as called for based upon whatever information it then has. Moreover, this conclusion may be based upon various reasons, some of which, such as workload considerations, are clearly irrelevant to the merits of any subsequent action.

By the Commission.

Further Information:

Staff should consult with OCC concerning any questions relating to the Wells process.

2.5 Enforcement Recommendations

2.5.1 The Action Memo Process

The filing or institution of any enforcement action must be authorized by the Commission. In addition, while the Commission has delegated certain authority to the Division Director or the Secretary, most settlements of previously authorized enforcement actions, as well as certain other aspects of civil litigation, among other things, require Commission authorization. Staff should consult with senior managers, OCC, and, if appropriate, OGC, before taking action to ensure that proper authorization is requested.

Commission authorization is sought by submitting an action memorandum to the Commission that sets forth a Division recommendation and provides a comprehensive explanation of the recommendation's factual and legal foundation. All action memoranda submitted to the Commission must be authorized by the Director or a Deputy Director, with a few exceptions. For example, memoranda seeking authorization to seek a specific penalty in previously filed civil litigation, and memoranda seeking the termination or discharge of debts may be submitted to the Commission upon the authorization of an Associate Director or Regional Director, provided that they do not present significant issues that merit higher-level authorization. Staff should consult with senior managers to ensure that appropriate authorization within the Division is obtained before submitting any recommendation.

Prior to submitting an action memorandum to the Commission, staff should solicit review and comment from OCC, OGC, and other interested Divisions or Offices.

2.5.2 Commission Authorization

After the Division presents a recommendation to the Commission, the Commission will consider the recommendation and vote on whether to approve or reject the recommendation. The Commission's consideration of the recommendation takes

place in a closed Commission meeting, by seriatim consideration, or by Duty Officer consideration.

A quorum of three or more Commissioners may approve a recommendation with a majority vote. If fewer than three Commissioners are currently appointed to the Commission, a quorum will consist of the number of Commissioners actually in office. If any Commissioners are *recused* from participating (as opposed to being unavailable to participate), two Commissioners may constitute a quorum. If only one Commissioner is not recused from participating, the matter must be deferred unless there are exigent circumstances, in which case the matter may be considered by the Duty Officer. 17 C.F.R. Section 200.41.

Before any recommendation is considered by the Commission, the staff must identify the counsel representing the subjects of the proposed enforcement action, so that the Commissioners may determine whether they may need to recuse themselves from considering the matter.

2.5.2.1 Closed Meetings

The Commission considers and votes on some of the Division's recommendations in "closed meetings," which are meetings that the Commission, pursuant to exemptions in the Government in the Sunshine Act ("Sunshine Act"), has voted to close to the public. For each matter which will be considered in a closed meeting, the staff prepares a Sunshine Act certification, to be signed by the General Counsel of the Commission, certifying that the matter falls within one of the exemptions provided by Title 5, Section 552 of the United States Code and Title 17, Section 200.402(a) of the Code of Federal Regulations. Generally, recommendations that are eligible to be considered at a closed meeting include recommendations to institute, modify, or settle an enforcement action or to consider an offer of settlement or other proposed disposition of an enforcement action.

At a closed meeting, Division staff orally presents a recommendation to the Commission and answers any questions before the Commission votes on the recommendation. Except in unusual circumstances, the Commissioners receive a copy of the Division's recommendation prior to the closed meeting. Staff should be prepared to answer the questions that are likely to be asked by the Commissioners and should contact the Commissioners' offices prior to the meeting to learn of any particular concerns or questions about the recommendation.

2.5.2.2 Seriatim Consideration

If the Chairman or the Duty Officer (*see* Section 2.5.2.3. of the Manual), determines that consideration of a recommendation at a closed meeting is “unnecessary in light of the nature of the matter, impracticable, or contrary to the requirements of agency business,” but that the recommendation should be the subject of a vote by the entire Commission, the recommendation may be acted upon separately by each Commissioner in turn – in other words, by seriatim consideration. 17 C.F.R. Section 200.42.

Seriatim consideration is often used when the date of a closed meeting is too distant to meet the timing needs of a particular recommendation, the matter is routine, or when the matter does not qualify under the Sunshine Act for consideration at a closed meeting. Matters that urgently require action before the next available closed meeting, but raise issues sufficient to warrant consideration by the entire Commission, may circulate on an expedited basis for rapid seriatim consideration. Staff should consult OCC and OS for the specific procedures required for submitting seriatim items.

Each participating Commissioner will report his or her vote on the recommendation to the Secretary of the Commission, using a seriatim coversheet prepared by the staff and approved by the Secretary. Even if a majority of the Commission has voted in favor of a seriatim recommendation, the matter is not authorized until each Commissioner has either recorded a vote or indicated that he or she is not participating. Any member of the Commission may pull a recommendation from seriatim circulation and instead place it on a closed meeting agenda for further consideration.

2.5.2.3 Duty Officer Consideration

The Commission delegates one of its members (other than the Chairman) as the Duty Officer on a rotating basis, empowering the Duty Officer to act, in his or her discretion, on behalf of the entire Commission when urgent action is required before a recommendation can be considered at a closed meeting or by seriatim. 17 C.F.R. Section 200.43. All decisions of the Duty Officer subsequently circulate among the other Commissioners for affirmation.

Generally, requests for Duty Officer consideration should result from an unavoidable and pressing external need. Typically, Duty Officer consideration is sought when the staff has recently become aware of imminent potential harm to investors, and the Division intends to recommend an emergency enforcement action, such as an immediate trading suspension or a civil action for a temporary restraining order. Duty Officer consideration should, as a general matter, not be sought where an enforcement recommendation presents close legal issues regarding jurisdiction or liability. Additionally, Duty Officer consideration is generally not an appropriate means to obtain approval of a proposed settlement. Staff should consult with OCC and OS to determine if Duty Officer consideration might be appropriate.